

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

1 1 1 2 SCOMM 33: WORKERS COMPENSATION, 1979-1982 112

SCOMM

18
33

9/19 Workers' Comp



Rogers
Dae Rasley
Mike Swalling
Tom O'Keefe
Dwayne Carlson
Cherry Croft
(Dennis) Maloney
<ChapadosJ>
3PM
ANC <Stinson>

- Speak into microphones
- Identify yourself
- Don't interrupt

<DEREGULATION>

- Go over materials
- October meeting

Diane Simonson
250 time loss

* TABULATE CARRIER LISTING
Carrier attorney ???

Maloney suggests →
1% pending - who stalled

- ★ Look @ comprehensive medical report
- if medical costs (med only or med + time loss)
→ obtain from carriers
- further info on hearing - chose prior to 78 — suggest 75 or 76

factie - info handling system

Croft total medical + time loss

PAT YOUNG - dep dir Div Voc REHAB
Fed funds on %

State 40% State
Federal 60% lagged
treated well

- 3: → Must have phys/mental disability
→ Employment handicap
→ Reasonable expectation indiv become employable

(2)

Pat Young → coop agreement w/ DIV WC. Xfer \$90K to DVR from 2nd Injury Fund eligibility

Actually \$143K.

Problem → funding problem @ 2nd injury
DVR has had enough (person must ~~make~~ meet both criteria

→ self referred

WC

phys

ins co's

If ineligible—refers to other agencies

welfare

SS disability

73 rehab Act and 78 title 7 -

Indep living rehabilitation up & running next month 10% match state funds

Receiving only \$200,000

Employer

on-the-job rehabilitation? Employer problem

As soon as on payroll employer is liable

??? Strike "without wages" in HB 705

Benefits cut in half for people in rehab.

SS disability insurance → indiv receiving when under retraining until on job. 9-12 months on job before claim terminated.

gail - 2500 people at any one time

@ DVR. some people 6 mos some 4 yrs

(3)

DVR - $\frac{196}{247}$ elig 2nd injury fund
51 inelig

FY 80 $\rightarrow$ rehabilitated 37 during FY 80
55 in training
rest - various

FY 80 active cases

closed - back to work, refused svcs, died
2nd inj 30 ref w comp
166 received elsewhere (physicians)

196

inelig 0 other sources

51 - ref w comp

= 81 w comp ref 166 other sources (phys, etc)

5% of 81 4 rehab
17 training
rest in system somewhere

20% of 166 33 rehab 37 rehab
38 training 55 training
rest in system

try to increase referrals from WComp

(ROFT) why not rehab

OKERE: time $\rightarrow$ decision for elig. bility 60 DAYS

time $\rightarrow$ Set up pgn VARIES 90 DAYS

time $\rightarrow$ Success Avg 22 months 17 mon

caseload WC/2nd inj - 5% of caseload

there is counseling in between

Pull out - AVG. COST

AVG. TIME

Maloney - time for Those receiving funds

not recig funds

★ Asked for study → disincentives built in

Maloney - study on time in process.

90% of those out after 2 yrs stay out

BARBARA - ANC

Billy Jones -

DWAYNE →

Virginia Collins - private rehab

Reemployment

Rehab nurse, counselor, etc

90% return - private sector

DJR

WComp carriers

Problems - referral system random lapse betw/ injury & referral

AVG - 1 YEAR longest 3 yr 282 days shortest 79 days

3 mos - personality change

6 mos - becomes permanent

5 1/2 mos from referral to mainstream problem of incentive

★ ★ Remove punitive aspect of rehab.

Primary responsibility for rehab is carriers
Need assignments, time frames, etc.

- Ins Co's agree to subsidize benefits to assist
- State screening criteria to evaluate early so adjuster can tell whether signif. problem - base on injury.
- Incentive to employers should increase
 - shorten time for 2nd injury fund assist.
 - reimburse employers for COT
- Need Comprehensive Education Problem

Robert McArmour - CVA

CLASS ACTION SUITS

- 1) why committee formed
- 2) arm loss
- 3) personal history

Bob Williams

W Comp rates for

Memo - broad areas for study groups

Rates promulgated Nat Council Comp Ins

licensed rating organization

members must write at Council's rates

carriers can file deviations - to inject compensation

NCCI compiles data →

rates by industries & job class

difficult to deviate -

submit evidence to Div.

Carriers send a stat to NCCI

Div lns reviews +

Most of deviations - loggers + air carriers
loggers - Indus Indem + ALPA file lower

Prices fixed

Ind Ind - wants to lower

Burden of proof

MALONEY →

Some basis for price fixing

Tom O'KEEFE - Insolvency

Can provide dollar amounts of insolvency

Rate system protects insolvency

Deviation - no significant problem

Dept lns bend over backwards for downward

Barbara Grissom -

1975 death claim insolvency

Carlson - competition

★ Put DUREN ON OPPOSITION TO SLOW INSOLVENCY

O'Keefe → Let Nat'l Council make presentation

Suggest → Ask Council - to testify

★ LOOK AT EXPENSE ALLOWANCE

★ Make them advisory, rather than licensing

★ Look at law regarding deviations

Dwayne - ask ISO to appear.

Assigned risk pool -

Rpts - Q: **ADVANCE** premium - monthly, quarterly, etc → there is competition.

Lack of competition.

Separate medical - let **Blue Cross**

Barbara - **San Stimson** here

CLERM STEPHENSON - W Comp Atty - 46 yrs AK 10 yrs

~~Problem~~ 1) good - can select his own doctor

Problem - men going outside - unfavorable reports

① Many attys don't know law. NMex - penalty if employer not using safety device. Nothing extra for damages if negligence

② Attorney's fees - limit - most receive only minimum
Board is a tough one → Decision is final on questions of fact. Board keeping attys away by low fees.

Recommend - if hard case → client agrees → allow higher

③ Injury. Award \$35,000 to raise children. 40% disabilities.

④ Ins. Cos → professional witnesses. Board not being careful. Cos not losing money.

Stimson - prof witnesses → Other than board being careful.

Smallwood case

SUGGEST FLAT FEE FOR ATTORNEYS

Kasley → leg is

COTTE → Hurt 9/26/78 DV Corrections - 2 operations. May need 3rd. Rec'd comp quickly. Assoc Sup't State Jail. 2/3 comp 1/3 sick. Had grievance (settled w/ state). Got 1 1/2 yrs retirement. + ERG - no credit for WComp time.

513300 - full pay. \$33,000 Receiving $\frac{1}{2}$ comp $\frac{1}{2}$ sick leave

DENNIS JENNINGS - person falling thru cracks

Injured up North. Recurrence - claimed allowed, appealed -
Sup Ct ok. Now before Supreme Ct. No one agreed to pay.

[in litigation] Problem - handling appeals. Twice offered
deal. Changes in WC - during litigation. State should
compete. ~~that's~~

Some judges $\rightarrow$ p. payments during trial

KELLEY EVERETTE - 2/29/76 injured. \$576 each 2 weeks. ^{Apprentice} welder.

Inflation eating up benefits. TT. Appeal to Supreme - back
to Sup Ct, +444/mo SSI. T-H \$8-900/wk.

problem - young workers $\rightarrow$ hadn't had same
work experience

Jackie McClintock

Jan 82 info handling system - More info needed?

Major Priorities

1) Funding of 2nd injury fund too% increase
1970 last update. Fund is bankrupt

→ Suggest have 6% TT PP TP PT 191
new 8% PP

24,100,000 comp	FY 79	proposed 2 nd Inj	\$1.4m
71,		current	\$1.085

86	291	need	900
def. 2.7	\$44,000	Spent	1.2m

→ Increase retraining more \$5000 to \$15000
Claim changed since 1959)

→ liability to state instead of employer
? disincenative to employer relieve?

2) ~~Additional~~ board members

want 1-2 days/wk in Arc, Fair
Maloney supports hearing officer

- ③ Procedural - Swellwood Doctrine
- ④ Rehab make 66%
- ⑤ ATTORNEY FEES (HB 705) - other states, practicing attys

Put Rehab under DOL

Co

CONTROVERSIONS

Ak is not an agreement state. In an agreement state, Div approves all start + stop payment.

→ Fund Comp administration via a tax on premiums
Maloney - tax labor too

→ Study - Ak highest controversions
Need penalties for failure to notice
Compromise + RELEASE -

Bd questions release of vac rehab, medical benefits
- but o.k. - majority not represented by claimant atty. By dollar amount, yes

Alice Ebenel - ACE gen'l contractors, only \$1000 for death burial. Vets \$350 SS, 250. Please raise.

75 Act inflationary. Weekly benefits - now \$700 tax-free
No incentive to return to work. Recommend - compensate w/
incentive to return to work. Pay 60%. Get away from formula - give latitude to Board.

Chapados - sick leave? NO. Not for union; yes office

Jim Thurman - No incentive. High rate of pay. 78

Jack Thompson - Air Van Lines - 20 ft. Teamsters, one per yr is a problem. Should be control/time frame on back injuries or other non-spec. fic.
Educate employers about rights.

EDUCATION IS
IMPORTANT

Need to improve to remain competitive.

1> Control over chiyo/phys/attys

2> Educate mgmt + labor about rights

Subtract sick leave from WC benefits

Ins co's trying to help w/safety

Activities after should be considered.

ROBT McARMOUR -

Breakaway from national system

Design own path

Wessel Rief - injured. Victimized by system. Care for the people

OCT: RATEMAKING

Roger Kampfer

SUBCOMMITTEES

[1] 2ND INJURY FUND Designed Risk
Expense Loading Premiums
{ WORKERS COMP RATES } ~~Rate Review~~
INSURANCE CODE
DIV OF INSURANCE
DEREGULATION - STATE FUND - HEALTH CARRIERS

[2] REHABILITATION + REEMPLOYMENT
DIV. VOCATIONAL REHABILITATION 191 benefits
(DIV W COMP, DHSS benefits for rehab)

[3] PROCEDURAL CHANGES hearings, investigations
DIV WORKERS COMP controversies
ADMINISTRATION statutory consistency
SAFETY + OSHA info handling system
Smallwood Doctrine ATTORNEY FEES compromise release

[4] BENEFIT LEVELS - DEATH MEDICAL
WAGES TT, PP, PT, TP
INJURIES + DISEASES

~~Maloney~~
~~Carlson~~

FUNERAL

~~Maloney~~

Claim files - Maloney + Carlson

EMPLOYMENT STANDARDS ADMINISTRATION REGULATIONS UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT, AS EXTENDED

General; Administering Agency; Definitions and Use of Terms (20 CFR 701)

RULES IN THIS SUBCHAPTER

- Sec
701.101 Scope of this subchapter and Subchapter B.
701.102 Organization of this subchapter.

OFFICE OF WORKMEN'S COMPENSATION PROGRAMS

- 701.201 Establishment of Office of Workmen's Compensation Programs.
701.202 Transfer of functions.
701.203 Historical background.

TERMS USED IN THIS SUBCHAPTER

- 701.301 Definitions and use of terms.

AUTHORITY: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 33 U.S.C. 939; 36 D.C. Code 501; 42 U.S.C. 1651; 43 U.S.C. 1331; 5 U.S.C. 8171; Secretary's Order No. 13-71, 36 FR 8755.

SOURCE: 38 FR 26860, Sept. 26, 1973, unless otherwise noted.

RULES IN THIS SUBCHAPTER

- § 701.101 Scope of this subchapter and Subchapter B.

This subchapter contains the regulations governing the administration of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) and its direct extensions, the Defense Base Act (DBA), the District of Columbia Workmen's Compensation Act (DCCA), the Outer Continental Shelf Lands Act (OCSLA), and the Nonappropriated Fund Instrumentalities Act (NFIA), and such other amendments and extensions as may hereinafter be enacted. The regulations governing administration of the Black Lung Benefits Program are in Subchapter B of this chapter.

- § 701.102 Organization of this subchapter.

This Part 701 is intended to provide a general description of the regulations in this subchapter, information as to the persons and agencies within the Department of Labor authorized by the Secretary of Labor to administer the Longshoremen's and Harbor Workers' Compensation Act and its extensions and the regulations in this subchapter, and guidance as to the meaning and use of specific terms in the several parts of this subchapter. Part 702 of this subchapter contains the general administrative regulations governing claims filed under the LHWCA, and Part 703 of this subchapter contains the regulations governing authorization of insurance carriers, authorization of self-insurers, and issuance of certificates of compliance with said insurance regulations, as required by sections 32 and 37 of the LHWCA, 33 U.S.C. 932, 937. Inasmuch as the extensions of the LHWCA (see § 701.101) incorporate by reference nearly all of the provisions of the LHWCA, such that the regulations governing the latter apply to the extensions with very few exceptions, it has been determined that no useful purpose would be served by repeating the

same provisions for each of the extensions. Accordingly, the regulations in Parts 702 and 703 shall apply to the administration of the extensions (DBA, DCCA, OCSLA, and NFIA), unless otherwise noted. The exceptions to the general applicability of Parts 702 and 703 of this subchapter are set forth in succeeding parts in this subchapter. Part 704 of this subchapter contains the exceptions for the DBA, the DCCA, the OCSLA, and the NFIA.

OFFICE OF WORKMEN'S COMPENSATION PROGRAMS

- § 701.201 Establishment of Office of Workmen's Compensation Programs.

The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order 16-75, 40 FR 55913, established in the Employment Standards Administration (ESA) an Office of Workers' Compensation Programs (OWCP) by Employment Standards Order 2-75, 40 FR 56743. The Assistant Secretary has further designated as the head thereof a Director who, under the general supervision of the Assistant Secretary, shall administer the programs assigned to that Office by the Assistant Secretary.

- § 701.202 Transfer of functions.

Pursuant to the authority vested in him by the Secretary of Labor, the Assistant Secretary for Employment Standards has transferred from the Bureau of Employees' Compensation to the Office of Workmen's Compensation Programs all functions of the Department of Labor with respect to the administration of benefits programs under the following statutes:

- The Longshoremen's and Harbor Workers' Compensation Act, as amended and extended, 33 U.S.C. 901 et seq.;
- Defense Base Act, 42 U.S.C. 1651 et seq.;
- District of Columbia Workmen's Compensation Act, 36 D.C. Code 501 et seq.;
- Outer Continental Shelf Lands Act, 43 U.S.C. 1331;
- Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171 et seq.;
- Title IV of the Federal Coal Mine Health and Safety Act, 83 Stat. 742, as amended by the Black Lung Benefits Act of 1972, 86 Stat. 150.

- § 701.203 Historical background.

Administration of the Longshoremen's and Harbor Workers' Compensation Act (and the Federal Employees' Compensation Act, formerly known as the U.S. Employees' Compensation Act), was initially vested in an independent establishment known as the U.S. Employees' Compensation Commission. By Reorganization

Plan No. 2 of 1946 (3 CFR 1943-1949 Comp., p. 1064; 60 Stat. 1095, effective July 16, 1946), the Commission was abolished and its functions were transferred to the Federal Security Agency to be performed by a newly created Bureau of Employees' Compensation within such Agency. By Reorganization Plan No. 19 of 1950 (15 FR 3178, 64 Stat. 1263) said Bureau was transferred to the Department of Labor, and the authority formerly vested in the Administrator, Federal Security Agency, was vested in the Secretary of Labor. By Reorganization Plan No. 6 of 1950 (15 FR 3174, 64 Stat. 1263), the Secretary of Labor was authorized to make from time to time such provisions as he shall deem appropriate, authorizing the performance of any of his functions by any other officer, agency or employee of the Department of Labor.

TERMS USED IN THIS SUBCHAPTER

- § 701.301 Definitions and use of terms.

(a) As used in this subchapter, except where the context clearly indicates otherwise:

(1) "Act" means the Longshoremen's and Harbor Workers' Compensation Act, as amended (33 U.S.C. 901 et seq.), also referred to in this subchapter as LHWCA, and includes the provisions of any statutory extension of such Act (see § 701.101) pursuant to which compensation on account of an injury is sought.

(2) "Secretary" means the Secretary of Labor, United States Department of Labor, or his authorized representative.

(3) "Employment Standards Administration" means the Employment Standards Administration in the United States Department of Labor, headed by the Assistant Secretary of Labor for Employment Standards.

(4) "Administrator" means the Deputy Assistant Secretary for Employment Standards in the Employment Standards Administration who also is Administrator of the Wage and Hour Division, and includes the Deputy Administrator for Wage and Compensation Programs.

(5) "Office of Workers' Compensation Programs" or "OWCP" or "the Office" means the Office of Workers' Compensation Programs in the Department of Labor, described in § 701.201 of this part. Whenever the term "Office of Workmen's Compensation Programs" appears in this part or in Part 702, it shall have the same meaning as "Office of Worker's Compensation Programs."

(6) "Director" means the Director, OWCP, or his authorized representative.

(7) "Deputy Commissioner" means a person appointed as provided in sections 39 and 40 of the LHWCA or his designee, authorized by the Director to perform functions with respect to the processing and determination of claims for compensation under such Act and its exten-

shall be promptly forwarded to the office of the Clerk of the Board. The notice shall be considered filed with the Clerk of the Board as of the date it was received by the other governmental unit if the Board finds that it is in the interest of justice to do so.

(b) *Date of mailing.* If the notice of appeal is sent by mail and the fixing of the date of delivery as the date of filing would result in a loss or impairment of appeal rights, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the mailing date.

§ 802.207 Contents of notice of appeal.

(a) A notice of appeal shall contain the following information:

(1) The full name and address of the petitioner;

(2) The full name of the injured, disabled, or deceased employee;

(3) The full names and addresses of all other parties, including, among others, beneficiaries, employers, coal mine operators, and insurance carriers where appropriate;

(4) The case file number which appears on the decision or order of the administrative law judge;

(5) The claimant's OWCP file number;

(6) The date of filing the decision or order being appealed;

(7) Whether a motion for reconsideration of the decision or order of the administrative law judge has been filed by any party (see § 802.209); and

(8) The name and address of the attorney or other person, if any, who is representing the petitioner.

(b) Paragraph (a) of this section notwithstanding, any written communication which reasonably permits identification of the decision from which an appeal is sought and the parties affected or aggrieved thereby, shall be sufficient notice for purposes of § 802.205.

(c) In the event that identification of the case is not possible from the information submitted, the Clerk of the Board shall so notify the petitioner and shall give the petitioner a reasonable time to produce sufficient information to permit identification of the case. For purposes of § 802.205, the notice shall be deemed to have been filed as of the date the insufficient information was received.

§ 802.208 Transmittal of record to the Board.

Upon receipt of a copy of the notice of appeal or upon request of the Board, the deputy commissioner or other office having custody of such record shall immediately forward to

the Clerk of the Board the official record of the case, which record includes the transcript or transcripts of all formal proceedings with exhibits, all decisions and orders rendered in the case.

INITIAL PROCESSING

§ 802.209 Acknowledgement of notice of appeal.

Upon receipt by the Board of a notice of appeal, the Clerk of the Board shall as expeditiously as possible notify the petitioner and all other parties and the Solicitor of Labor, in writing, that a notice of appeal has been filed.

§ 802.210 Petition for review.

(a) Within 30 days after the receipt of an acknowledgment of a notice of appeal issued pursuant to § 802.209, the petitioner shall submit a petition for review to the Board and shall serve copies of it, together with accompanying documents, on all parties and the Solicitor of Labor. A petition for review shall contain a statement indicating the specific contentions of the petitioner and describing with particularity the substantial questions of law or fact to be raised by the appeal. Failure to submit a petition for review within the 30-day period described in this section may, in the discretion of the Board, cause the appeal to be deemed abandoned (see § 802.402).

(b) Each petition for review shall be accompanied by supporting brief, memorandum of law, or other statement.

§ 802.211 Response to petition for review.

Within 30 days after the receipt of a petition for review, each party upon whom it was served may submit to the Board a brief, memorandum, or other statement in response to it.

§ 802.212 Reply briefs.

Within 20 days after the receipt of a brief, memorandum, or statement submitted in response to the petition for review pursuant to § 802.211, any party upon whom it was served may file a brief, memorandum, or other statement in reply to it.

§ 802.213 Intervention.

(a) If a person or legal entity shows in a written petition to intervene that his, her, or its rights are affected by any proceeding before the Board, the Board may permit that person or legal entity to intervene in the proceeding and to participate within limits prescribed by the Board.

(b) The petition to intervene shall state precisely (1) the rights affected, and (2) the nature of any argument he, she, or it intends to make.

§ 802.214 Additional briefs.

Additional briefs may be filed or ordered in the discretion of the Board

and shall be submitted within time limits specified by the Board.

§ 802.215 Service and form of papers.

(a) All papers filed with the Board, including notices of appeal, petitions for review, briefs and motions, shall be secured at the top and shall have a caption, title, signature of the party (or his attorney or other representative), date of signature, and certificate of service.

(b) For each paper filed with the Board, the original and three legible copies shall be submitted.

(c) A copy of any paper filed with the Board shall be served on each party and the Solicitor of Labor, by the party submitting the paper.

(d) Any paper required to be given or served to or by the Board or any party shall be served by mail or otherwise presented. All such papers served shall be accompanied by a certificate of service.

§ 802.216 Waiver of time limitations for filing.

(a) The time periods specified for submitting papers described in this part, except that for submitting a notice of appeal, may be enlarged for a reasonable period when in the judgment of the Board an enlargement is warranted.

(b) Any request for an enlargement of time pursuant to this section shall be directed to the Clerk of the Board and must be received by the Clerk on or prior to the date on which the paper is due.

(c) Any request for an enlargement of time pursuant to this section shall be submitted in writing in the form of a motion, shall specify the reasons for the request, and shall specify the date to which an enlargement of time is requested.

(d) Absent exceptional circumstances, no more than one enlargement of time shall be granted to each party.

(e) Absent a timely request for an enlargement of time pursuant to this section and the Board's granting that request, any paper submitted to the Board outside the applicable time period specified in this part shall be accompanied by a separate motion stating the reasons therefore and requesting that the Board accept the paper although filed out of time.

(f) When a paper filed out of time is accepted by the Board, the time for filing a response shall begin to run from the date of a party's receipt of the Board's order disposing of the motion referred to in paragraph (e) of this section.

§ 802.217 Failure to file papers; order to show cause.

(a) Failure to file any paper when due pursuant to this part, may, in the discretion of the Board, constitute a waiver of the right to further participation in the proceedings.

sions as provided therein and in this subchapter.

(8) "Administrative Law Judge" means an administrative law judge appointed as provided in 5 U.S.C. 3105 and Subpart B of 5 CFR Part 930 (see 37 FR 16737), who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings whenever necessary in respect of any claim for compensation arising under the LHWCA and its extensions.

(9) "Chief Administrative Law Judge" means the Chief Judge of the Office of Administrative Law Judges, United States Department of Labor.

(10) "Board" or "Benefits Review Board" means the Benefits Review Board established by section 21 of the LHWCA (33 U.S.C. 921) as amended and constituted and functioning pursuant to the provisions of Chapter VII of this Title 20 and Secretary of Labor's Order No. 38-72 (38 FR 90).

(11) "Department" means the United States Department of Labor.

(12) "Employee" includes any employee to whom an injury, as defined in section 2(3) of the LHWCA, may be the basis for a compensation claim under the LHWCA as amended, or any of its extensions.

(13) "Employer" includes any employer who may be obligated as an employer under the provisions of the LHWCA as amended or any of its extensions to pay and secure compensation as provided therein.

(14) "Carrier" means an insurance carrier or self-insurer meeting the requirements of section 32 of the LHWCA as amended and of this subchapter with respect to authorization to provide insurance fulfilling the obligation of an employer to secure the payment of compensation due his employees under the LHWCA as amended or a statutory extension thereof.

(15) The terms "wages", "national average weekly wage", "injury", "disability", "death", and "compensation" shall have the meanings set forth in section 2 of the LHWCA.

(16) "Claimant" includes any person claiming compensation or benefits under the provisions of the LHWCA as amended or a statutory extension thereof on account of the injury or death of an employee.

(b) The definitions contained in paragraph (a) of this section shall not be considered to derogate from any definitions or delimitations of terms in the LHWCA as amended or any of its statutory extensions in any case where such statutory definitions or delimitations would be applicable.

(c) As used in this subchapter, the singular includes plural and the masculine includes the feminine.

Administration and Procedures (20 CFR 702)

Subpart A—General Provisions		Sec.		Sec.	
ADMINISTRATION		702.218	Claims; notification of employer of filing by employee.	702.339	Formal hearings; evidence.
702.101	Establishment of compensation districts.	702.218	Withdrawal of a claim.	702.340	Formal hearings; witness's.
702.102	Establishment of suboffices and jurisdictional areas.	NONCONTROVERTED CLAIMS		702.341	Formal hearings; depositions; interrogatories.
702.103	Effect of establishment of suboffices and jurisdictional areas.	702.231	Noncontroverted claims; payment of compensation without an award.	702.342	Formal hearings; witness fees.
702.104	Transfer of individual cases.	702.232	Payments without an award; when; how paid.	702.343	Formal hearings; oral argument and written allegations.
RECORDS		702.233	Penalty for failure to pay without an award.	702.344	Formal hearings; record of hearing.
702.111	Employer's records.	702.234	Report by employer of commencement and suspension of payments.	702.345	Formal hearings; consolidated issues; consolidated cases.
702.112	Records of the OWCP.	702.235	Report by employer of termination of payments.	702.346	Formal hearings; waiver of right to appear.
702.113	Inspection of records of the OWCP.	702.236	Penalty for failure to report termination of payments.	702.347	Formal hearings; termination.
702.114	Copying of records of OWCP.	AGREED SETTLEMENTS		702.348	Formal hearings; preparation of final decision and order; content.
FORMS		702.241	Agreed settlements; monetary benefits.	702.349	Formal hearings; filing and mailing of compensation orders; disposition of transcripts.
702.121	Forms.	702.242	Agreed settlements; medical benefits.	702.350	Finality of compensation orders.
REPRESENTATION		CONTOVERTED CLAIMS		702.351	Withdrawal of controversion of issues set for formal hearing; effect.
702.131	Representation of parties in interest.	702.251	Employer's controversion of the right to compensation.	INTERLOCUTORY MATTERS, SUPPLEMENTARY ORDERS, AND MODIFICATIONS	
702.132	Fee for services.	702.252	Action by deputy commissioner upon receipt of notice of controversion.	702.371	Interlocutory matters.
702.133	Unapproved fees; solicitation of claimants; penalties.	CONTESTED CLAIMS		702.372	Supplementary compensation orders.
702.134	Payment of claimant's attorney's fees in disputed claims.	702.261	Claimant's contest of actions taken by employer or carrier with respect to the claim.	702.373	Modification of awards.
702.135	Payment of claimant's witness fees and mileage in disputed claims.	702.262	Action by deputy commissioner upon receipt of notice of contest.	APPEALS	
INFORMATION AND ASSISTANCE FOR CLAIMANTS		Subpart C—Adjudication Procedures		702.391	Appeals; where.
702.136	Requests for information and assistance.	GENERAL		702.392	Appeals; what may be appealed.
COMMUTATION OF PAYMENTS AND SPECIAL FUND		ACTION BY DEPUTY COMMISSIONERS		702.393	Appeals; time limitations.
702.141	Commutation of payments; generally.	702.301	Scope of this subpart.	702.394	Appeals; procedure.
702.142	Commutation of payments; aliens not residents or about to become nonresidents.	Subpart D—Medical Care and Supervision		Subpart D—Medical Care and Supervision	
702.143	Establishment of special fund.	702.401	Medical care defined.	702.401	Medical care defined.
702.144	Purpose of the special fund.	702.402	Employer's duty to furnish; duration.	702.402	Employer's duty to furnish; duration.
702.145	Use of the special fund.	702.403	Employee's right to choose physician; limitation.	702.403	Employee's right to choose physician; limitation.
702.146	Sources of the special fund.	702.404	Physician defined.	702.404	Physician defined.
702.147	Enforcement of special fund provisions.	702.405	Selection of physician; emergencies.	702.405	Selection of physician; emergencies.
702.148	Insurance carriers' and self-insured employers' responsibility.	702.406	Change of physicians; non-emergencies.	702.406	Change of physicians; non-emergencies.
LIENS ON COMPENSATION		702.407	Supervision of medical care.	702.407	Supervision of medical care.
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Subpart E—Vocational Rehabilitation

Sec.

- 702.501 Vocational rehabilitation; objective.
- 702.502 Vocational rehabilitation; action by deputy commissioners.
- 702.503 Vocational rehabilitation; action by adviser.
- 702.504 Vocational rehabilitation; referrals to State Employment Agencies.
- 702.505 Vocational rehabilitation; referrals to other public and private agencies.
- 702.506 Vocational rehabilitation; training.
- 702.507 Vocational rehabilitation; maintenance allowance.
- 702.508 Vocational rehabilitation; confidentiality of information.

AUTHORITY: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 16 FR 3174, 64 Stat. 1268; 33 U.S.C. 939; 42 U.S.C. 1651 et seq.; 36 D.C. Code 501 et seq.; 43 U.S.C. 1351; 5 U.S.C. 8171 et seq.; Secretary of Labor's Order No. 13-71, 36 FR 8785.

SOURCE: 38 FR 28861, Sept. 26, 1973, unless otherwise noted.

Subpart A—General Provisions

ADMINISTRATION

§ 702.101 Establishment of compensation districts.

Pursuant to section 39(b) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 939(b), the following compensation districts have been established:

- District No. 1. Comprises the States of Massachusetts, Maine, New Hampshire, Vermont, Rhode Island, and Connecticut; with headquarters at Boston, Mass.
- District No. 2. Comprises the States of New York and New Jersey; with headquarters at New York, N.Y.
- District No. 3. Comprises the States of Pennsylvania, Delaware, and West Virginia; with headquarters at Philadelphia, Pa.
- District No. 4. Comprises the State of Maryland and the District of Columbia; with headquarters at Baltimore, Md.
- District No. 5. Comprises the State of Virginia; with headquarters at Norfolk, Va.
- District No. 6. Comprises the States of Florida, North Carolina, Kentucky, Tennessee, South Carolina, Georgia, Alabama, and Mississippi; with headquarters at Jacksonville, Fla.
- District No. 7. Comprises the States of Louisiana and Arkansas; with headquarters at New Orleans, La.
- District No. 8. Comprises the States of Texas, Oklahoma, and New Mexico; with headquarters at Houston, Tex.
- District No. 9. Comprises the States of Ohio, Indiana, and Michigan; with headquarters at Cleveland, Ohio.
- District No. 10. Comprises the States of Illinois, Minnesota, and Wisconsin; with headquarters at Chicago, Ill.
- District No. 11. Comprises the States of Missouri, Iowa, Kansas and Nebraska; with headquarters at Kansas City, Mo.
- District No. 12. Comprises the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; with headquarters at Denver, Colo.
- District No. 13. Comprises the States of Arizona, Nevada, and that part of the State of California north of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino; with headquarters at San Francisco, Calif.
- District No. 14. Comprises the States of Washington, Idaho, Oregon, and Alaska; with headquarters at Seattle, Wash.

District No. 15. Comprises the State of Hawaii; with headquarters at Honolulu, Hawaii.

District No. 16. [Reserved.]

District No. 17. [Reserved.]

District No. 18. Comprises that part of the State of California south of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino; with headquarters in Long Beach, Calif.

§ 702.102 Establishment of suboffices and jurisdictional areas.

(a) As administrative exigencies from time to time may require, the Director may, by administrative order, establish special areas outside the continental United States, Alaska, and Hawaii, or change or modify any areas so established, notwithstanding their inclusion within an established compensation district. Such areas shall be designated "jurisdictional areas." The Director shall also designate which of his deputy commissioners shall be in charge thereof.

(b) To further aid in the efficient administration of the OWCP, the Director may from time to time establish suboffices within compensation districts or jurisdictional areas, and shall designate a person to be in charge thereof.

§ 702.103 Effect of establishment of suboffices and jurisdictional areas.

Whenever the Director establishes a suboffice or jurisdictional area, those reports, records, or other documents with respect to processing of claims that are required to be filed with the deputy commissioner of the compensation district in which the injury or death occurred, may instead be required to be filed at the suboffice, or office established for the jurisdictional area.

§ 702.104 Transfer of individual case file.

(a) At any time after a claim is filed, the deputy commissioner having jurisdiction thereof may, with the prior or subsequent approval of the Director, transfer such case to the deputy commissioner in another compensation district for the purpose of making an investigation, ordering medical examinations, or taking such other action as may be necessary or appropriate to further develop the claim. If, after filing a claim, the claimant moves to another compensation district, the deputy commissioner may, upon request by the claimant or the employer and with the approval of the Director, transfer the case to such other compensation district.

(b) The deputy commissioner making the transfer may by letter or memorandum to the deputy commissioner to whom the case is transferred give advice, comments, suggestions, or directions if appropriate to the particular case. The transfer of cases shall be by registered or certified mail. All interested parties shall be advised of the transfer.

RECORDS

§ 702.111 Employer's records.

Every employer shall maintain adequate records of injury sustained by employees while in his employ, and which shall also contain information of disease,

other impairments or disabilities, or death relating to said injury. Such records shall be available for inspection by the OWCP or by any State authority.

§ 702.112 Records of the OWCP.

All reports, records, or other documents filed with the OWCP with respect to claims are the records of the OWCP. The Director shall be the official custodian of those records maintained by the OWCP at its national office, and the deputy commissioner shall be the official custodian of those records maintained at the headquarters office in each compensation district.

§ 702.113 Inspection of records of the OWCP.

Any party in interest may be permitted to examine the record of the case in which he is interested. The official custodian of the record sought to be inspected shall permit or deny inspection in accordance with the Department of Labor's regulations pertaining thereto (see 29 CFR Part 70). The original record in any such case shall not be removed from the office of the custodian for such inspection. The custodian may, in his discretion, deny inspection of any record or part thereof which is of a character specified in 5 U.S.C. 552(b) if in his opinion such inspection may result in damage, harm, or harassment to the beneficiary or to any other person. For special provisions concerning release of information regarding injured employees undergoing vocational rehabilitation, see § 702.508.

§ 702.114 Copying of records of OWCP.

Any party in interest may request copies of records he has been permitted to inspect. Such requests shall be addressed to the official custodian of the records sought to be copied. The official custodian shall provide the requested copies under the terms and conditions specified in the Department of Labor's regulations relating thereto (see 29 CFR Part 70).

FORMS

§ 702.121 Forms.

The Director may from time to time prescribe, and require the use of, forms for the reporting of any information required to be reported by the regulations in this subchapter, or by the Act or any of its extensions.

REPRESENTATION

§ 702.131 Representation of parties in interest.

Claimants, employers and insurance carriers may be represented in any proceeding under the Act by an attorney or other person previously authorized in writing by such claimant, employer or carrier to so act.

§ 702.132 Fees for services.

An attorney seeking a fee for services performed on behalf of a claimant with respect to claims filed under the Act shall make application therefor to the deputy commissioner, administrative law judge, Board, or court, as the case may

be, before whom the services were performed (See 33 U.S.C. 928(c)). The application shall be filed and served upon the other parties within the time limits specified by such deputy commissioner, administrative law judge, Board, or court. The application shall be supported by a complete statement of the extent and character of the necessary work done, described with particularity as to

the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing such work, the normal billing rate for each such person, and the hours devoted by each such person to each category of work. Any fee approved shall be reasonably commensurate with the necessary work done and shall take into

account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded, and when the fee is to be assessed against the claimant, shall also take into account the financial circumstances of the claimant. No contract pertaining to the amount of a fee shall be recognized.

(continued on page 2-11)

§ 702.133 Unapproved fees; solicitation of claimants; penalties.

Under the provisions of section 28(e) of the Act, 33 U.S.C. 928(e), any person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of a claimant, unless such consideration or gratuity is approved under § 702.132, or who makes it a business to solicit employment for an attorney, or for himself in respect of any claim under the Act, shall upon conviction thereof, for each offense be punished by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or by both fine and imprisonment.

§ 702.134 Payment of claimant's attorney's fees in disputed claims.

(a) If the employer or carrier declines to pay any compensation on or before the 30th day after receiving written notice from the deputy commissioner of a claim for compensation having been filed, on the ground that there is no liability for compensation within the provisions of this Act, and the person seeking benefits shall thereafter have utilized the services of an attorney at law in the successful prosecution of his claim, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee against the employer or carrier in an amount approved by the person, administrative body or court before whom the service was performed, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum after the compensation order becomes final (Act, section 28(a)).

(b) If the employer or carrier pays or tenders payment of compensation without an award pursuant to § 702.231 and section 14 (a) and (b) of this Act, and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the deputy commissioner, administrative law judge, or Board shall set the matter for an informal conference and following such conference the deputy commissioner, administrative law judge, or Board shall recommend in writing a disposition of the controversy. If the employer or carrier refuses to accept such written recommendation, within 14 days after its receipt by them, they shall pay or tender to the employee in writing the additional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation, and thereafter utilizes the services of an attorney at law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation. The foregoing sentence shall not apply if the controversy relates to degree or length of disability, and if the employer or carrier offers to submit the case for evaluation

by physicians employed or selected by the deputy commissioner, as authorized by section 7(e) of the Act and § 702.408, and offers to tender an amount of compensation based upon the degree or length of disability found by the independent medical report at such time as an evaluation of disability can be made. If the claimant is successful in review proceedings before the Board or court in any such case an award may be made in favor of the claimant and against the employer or carrier for a reasonable attorney's fee for claimant's counsel in accord with the above provisions. In all other cases any claim for legal services shall not be assessed against the employer or carrier (see Act, section 28(b)).

§ 702.135 Payment of claimant's witness fees and mileage in disputed claims.

In cases where an attorney's fee is awarded against an employer or carrier there may be further assessed against such employer or carrier as costs, fees and mileage for necessary witnesses attending the hearing at the instance of claimant. Both the necessity for the witnesses and the reasonableness of the fees of expert witnesses must be approved by the hearing officer, the Board, or the court, as the case may be. The amounts awarded against an employer or carrier as attorney's fees, costs, fees and mileage for witnesses shall not in any respect affect or diminish the compensation payable under this Act (see Act, section 28(d)).

INFORMATION AND ASSISTANCE FOR CLAIMANTS

§ 702.136 Requests for information and assistance.

(a) *General assistance.* The Director shall, upon request, provide persons covered by the Act with information and assistance relating to the Act's coverage and compensation and the procedures for obtaining such compensation including assistance in processing a claim.

(b) *Legal assistance to claimants.* The Secretary may, upon request, provide a claimant with legal assistance in processing a claim under the Act. Such assistance may be made available to a claimant in the discretion of the Solicitor of Labor or his designee at any time prior to or during which the claim is being processed and shall be furnished without charge to the claimant. Legal representation of the claimant in adjudicatory proceedings may be furnished in cases in which the Secretary's interest in the case is not adverse to that of the claimant.

(c) *Other assistance.* The deputy commissioners and their staff, as designees of the Director, shall promptly and fully comply with the request of a claimant receiving compensation for information about, and assistance in obtaining, medical, manpower, and vocational rehabilitation services (see also Subparts D and E of this part).

COMMUTATION OF PAYMENTS AND SPECIAL FUNDS

§ 702.141 Commutation of payments; generally.

(a) Pursuant to section 14(j) of the Act, 33 U.S.C. 914(j), the deputy commissioner may determine that, in the interest of justice, the liability of the employer for compensation, or any part thereof, may be discharged by the payment of a lump sum equal to the present value of future payments commuted, computed at 4 per centum true discount compounded annually.

(b) Applications for commutation of future benefits shall be made to the deputy commissioner, on a form prescribed by the Director, OWCP, for that purpose. Applications shall be supported with a statement of the reasons for such application, together with such pertinent data as may lend support thereto.

(c) Applications for commutation of payments in disability cases will be accepted only when a compensation order has been filed in which the quality of the disability is found to be permanent and the duration of such disability is fixed by said order. Applications for commutation of payments in death cases will be approved only when it is shown that the rights of all probable and potential beneficiaries have been determined and after a compensation order has been filed fixing the rights of the beneficiary making the application or on whose behalf such commutation is sought.

(d) Commutations of payments shall be considered by the deputy commissioner, but no final action shall be taken in any case without the prior approval of the Director, OWCP.

(e) The probability of the happening of any contingency of any nature whatsoever affecting the amount of duration of compensation to be commuted shall not be considered excepting:

(1) The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which he is entitled to compensation shall be determined in accordance with the American Experience Table of Mortality; and

(2) The probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution.

§ 702.142 Commutation of payments; aliens not residents or about to become nonresidents.

(a) Pursuant to section 9(g) of the Act, 33 U.S.C. 909(g), compensation paid to aliens not residents, or about to become nonresidents, of the United States or Canada shall be in the same amount as provided for residents except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of 1 year prior to the date of injury, and except that the Director, OWCP, may, at his option, or upon the

application of the insurance carrier he shall, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the Director.

(b) Applications for commutation under this section shall be made in writing to the deputy commissioner having jurisdiction, and forwarded by the deputy commissioner to the Director, for final action.

(c) Applications for commutations shall be made effective, if approved by the Director, on the date received by the deputy commissioner, or on a later date if shown to be appropriate on the application.

(d) Commutations shall not be made with respect to a person journeying abroad for a visit who has previously declared an intention to return and has stated a time for returning, nor shall any commutation be made except upon the basis of a compensation order fixing the right of the beneficiary to compensation.

§ 702.143 Establishment of special fund.

Congress, by section 44 of the Act, 33 U.S.C. 944, established in the U.S. Treasury a special fund, to be administered by the Secretary. The Treasurer of the United States is the custodian of such fund, and all monies and securities in such fund shall be held in trust by the Treasurer and shall not be money or property of the United States. The Treasurer shall make disbursements from such funds only upon the order of the Director, OWCP, as delegate of the Secretary. The Act requires that the Treasurer give bond, in an amount to be fixed and with securities to be approved by the Secretary of the Treasury and the Comptroller General of the United States, conditioned upon the faithful performance of his duty as custodian of such fund.

§ 702.144 Purpose of the special fund.

This special fund was established to give effect to a congressional policy determination that, under certain circumstances, the employer of a particular employee should not be required to bear the entire burden of paying for the compensation benefits due that employee under the Act. Instead, a substantial portion of such burden should be borne by the industry generally. Section 702.145 describes this special circumstance under which the particular employer is relieved of some of his burden. Section 702.146 describes the manner and circumstances of the input into the fund.

§ 702.145 Use of the special fund.

(a) Under section 10 of the Act. This section provides for initial and subsequent annual adjustments in compensation and continuing payments to beneficiaries in cases of permanent total disability or death which commenced or occurred prior to enactment of the 1972 Amendments to this Act (Pub. L. 92-

876, approved Oct. 27, 1972). At the discretion of the Director, such payments may be paid directly by him to eligible beneficiaries as the obligation accrues, one-half from the special fund and one-half from appropriations, or he may require insurance carriers or self-insured employers already making payments to such beneficiaries to pay such additional compensation as the amended Act requires. In the latter case such carriers and self-insurers shall be reimbursed by the Director for such additional amounts paid, in the proportion of one-half the amount from the special fund and one-half the amount from appropriations. To obtain reimbursement, the carriers and self-insurers shall submit claims for payments made by them during previous periods at intervals of not less than 6 months. A form has been prescribed for such purpose and shall be used. No administrative claims service expense incurred by the carrier or self-insurer shall be included in the claim and no such expense shall be allowed. The amounts reimbursed to such carrier or self-insurer shall be limited to amounts actually due and previously paid to beneficiaries.

(b) Under section 8(f) of the Act (Second Injuries). In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury, based upon the average weekly wages of the employee at the time of injury. If, following an injury falling within the provisions of section 8(c)(1)-(20), the employee with the pre-existing permanent partial disability becomes permanently and totally disabled after the second injury, but such total disability is found not to be due solely to his second injury, the employer (or carrier) shall be liable for compensation as provided by the provisions of section 8(c)(1)-(20) of the Act, 33 U.S.C. 908(c)(1)-(20), or for 104 weeks, whichever is greater. In all other cases of a second injury causing permanent total disability (or death), wherein it is found that such disability (or death) is not due solely to the second injury, and wherein the employee had a preexisting permanent partial disability, the employer (or carrier) shall first pay compensation under section 8(b) or (e) of the Act, 33 U.S.C. 908(b) or (e), if any is payable thereunder, and shall then pay 104 weeks compensation for such total disability or death, and none otherwise. If the second injury results in permanent partial disability, and if such disability is compensable under section 8(c)(1)-(20) of the Act, 33 U.S.C. 908(c)(1)-(20), but the disability so compensable did not result solely from such second injury, and the disability so compensable is materially and substantially greater than that which would have resulted from the second injury alone, then the employer (or carrier) shall only be liable for the amount of compensation provided for in section 8(c)(1)-(20) that is attributable to such second injury, or for 104 weeks, whichever is greater. In all other cases wherein the employee is permanently

and partially disabled following a second injury, and wherein such disability is not attributable solely to that second injury, and wherein such disability is materially and substantially greater than that which would have resulted from the second injury alone, and wherein such disability following the second injury is not compensable under section 8(c)(1)-(20) of the Act, then the employer (or carrier) shall be liable for such compensation as may be appropriate under section 8(b) or (e) of the Act, 33 U.S.C. 908(b) or (e), if any, to be followed by a payment of compensation for 104 weeks, and none other. The term "compensation" herein means money benefits only, and does not include medical benefits. The procedure for determining the extent of the employer's (or carrier's) liability under this paragraph shall be as provided for in the adjudication of claims in Subpart C of this Part 702. Thereafter, upon cessation of payments which the employer is required to make under this paragraph, if any additional compensation is payable in the case, the deputy commissioner shall forward such case to the Director for consideration of an award to the person or persons entitled thereto out of the special fund. Any such award from the special fund shall be by order of the Director or Acting Director.

(c) Under sections 8(g) and 39(c)(2) of the Act. These sections, 33 U.S.C. 908(g) and 939(c)(2), respectively, provide for vocational rehabilitation of disabled employees, and authorize, under appropriate circumstances, a maintenance allowance for the employee (not to exceed \$25 a week) in addition to other compensation benefits otherwise payable for his injury-related disability. Awards under these sections are made from the special fund upon order of the Director or his designee. The deputy commissioners may be required to make investigations with respect to any case and forward to the Director their recommendations as to the propriety and need for such maintenance.

(d) Under section 39(c)(2) of the Act. In addition to the maintenance allowance for the employee discussed in paragraph (c) of this section, the Director is further authorized to use the fund in such amounts as may be necessary to procure the vocational training services.

(e) Under section 7(e) of the Act. This provision, 33 U.S.C. 907(e), authorizes payment by the Director from the special fund for special medical examinations, i.e., those obtained from impartial specialists to resolve disputes, when such special examinations are deemed necessary under that statutory provision. The Director has the discretionary power, however, to charge the cost of such examination to the insurance carrier or self-insured employer.

(f) Under section 18(b) of the Act. This section, 33 U.S.C. 918(b), provides a source for payment of compensation benefits in cases where the employer is insolvent, or other circumstances preclude the payment of benefits due in any

case. In such situations, the deputy commissioner shall forward the case to the Director for consideration of an award from the special fund, together with evidence with respect to the employer's insolvency or other reasons for nonpayment of benefits due. Benefits, as herein used, means medical care or supplies within the meaning of section 7 of the Act, 33 U.S.C. 907, and Subpart D of this Part 702, as well as monetary benefits. Upon receipt of the case, the Director shall promptly determine whether an award from the special fund is appropriate and advisable in the case, having due regard for all other current commitments from the special fund. If such an award is made, the employer shall be liable for the repayment into the fund of the amounts paid therefrom, as provided in 33 U.S.C. 918(b).

§ 702.146 Sources of the special fund.

(a) All amounts collected as fines and penalties under the several provisions of the Act shall be paid into the special fund (Act, section 44(c)(3)). Civil penalties provided for in the Act shall be collected by civil suits brought by, and in the name of, the Secretary of Labor.

(b) Whenever an employee dies under circumstances creating a liability on an employer to pay death benefits to the employee's beneficiaries, and whenever there are no such beneficiaries entitled to such payments, the employer shall pay \$5,000 into the special fund (Act, section 44(c)(1)). In such cases, the compensation order entered in the case shall specifically find that there is such liability and that there are no beneficiaries entitled to death benefits, and shall order payment by the employer into the fund. Compensation orders shall be made and filed in accordance with the regulations in Subpart C of this Part 702, except that for this purpose the deputy commissioner settling the case under § 702.315 shall formalize the memorandum of conference in a compensation order, and shall file such order as provided for in § 702.349.

(c) The Director annually shall assess an amount against insurance carriers and self-insured employers authorized under the Act and Part 703 of this subchapter to replenish the fund. The total amount to be charged all carriers and self-insurers to be assessed shall be based upon his estimate of the probable expenses of the fund during the calendar year. The assessment against each carrier and self-insurer shall be based upon the amount each paid during the prior calendar year, for compensation and medical benefits, in relation to the amount all such authorized carriers or self-insurers paid during that period for compensation and medical benefits. If no amount was paid during the prior year, no assessment shall be made. The resulting percentage each paid out for such benefits the prior year shall be the percentage each shall pay into the fund under the current assessment (see Act, section 44(c)(2)). The Director may, in his discretion, condition renewal of authorization under Part 703 of this subchapter upon prompt payment of the

assessment. However, no action suspending or revoking such authorization shall be taken without affording such carrier or self-insurer a hearing before the Director or his designee.

§ 702.147 Enforcement of special fund provisions.

(a) As provided in section 44(d)(1) of the Act, 33 U.S.C. 944(d)(1), for the purpose of making rules, regulations, and determinations under the special fund provisions in section 44 and for providing enforcement thereof, the Director may investigate and gather appropriate data from each carrier and self-insured employer, and may enter and inspect such places and records (and make such transcriptions of records), question such employees, and investigate such facts, conditions, practices, or other matters as he may deem necessary or appropriate.

(b) Pursuant to section 44(d)(3) of the Act, 33 U.S.C. 944(d)(3), for the purpose of any hearing or investigation related to determinations or the enforcement of the provisions of section 44 with respect to the special fund, the provisions of 15 U.S.C. 49 and 50 as amended (the Federal Trade Commission Act provisions relating to attendance of witnesses and the production of books, papers, and documents) are made applicable to the jurisdiction, powers, and duties of the Director, OWCP, as the Secretary's delegatee.

§ 702.148 Insurance carriers' and self-insured employers' responsibility.

Each carrier and self-insured employer shall make, keep, and preserve such records, and make such reports and provide such additional information as the Director prescribes or orders, which he considers necessary or appropriate to effectively carry out his responsibilities.

LIENS ON COMPENSATION

§ 702.161 Liens against assets of insurance carriers and employers.

(a) Where a claimant is entitled to compensation under the provisions of this Act, and the carrier or employer shall have suffered insolvency, bankruptcy, or reorganization in bankruptcy proceedings and be unable to pay appropriate compensation, the claimant shall have a lien against the assets of such carrier or employer, or both. Such lien shall be without limit and shall be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

(b) Where payments have been made from the special fund pursuant to section 18(b) of the Act and § 704.145(f) the Secretary of Labor shall, for the benefit of the fund, be subrogated to all the rights of the person receiving such payments including the right of lien and priority provided for by section 17(a) of the Act, 33 U.S.C. 917(a). The Secretary may institute proceedings under either section 18 or 21(d) of the Act, 33 U.S.C. 918 or 921(d), or both, to recover the amount expended by the fund or so much as in the judgment of the Secretary is possible, or the Secretary may settle or compromise any such claim.

3. Section 702.162 is revised to read as follows:

§ 702.162 Liens on compensation authorized under special circumstances.

(a) Pursuant to section 17(b) of the Act, 33 U.S.C. 917(b), when a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947, 29 U.S.C. 186(c) (LMRA), established pursuant to a collective bargaining agreement in effect between an employer and an employee entitled to compensation under this Act, has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this Act, a lien may be authorized on such compensation in favor of the trust fund for the amount of such payments.

(b) (1) An application for such a lien shall be filed on behalf of the trust fund with the deputy commissioner for the compensation district where the claim for compensation has been filed. 20 CFR 702.101. Such application shall include a certified statement by an authorized official of the trust fund that:

(i) The trust fund is entitled to a lien in its favor by reason of its payment of disability payments to a claimant-employee (including his name therein);

(ii) The trust fund was created pursuant to a collective bargaining agreement covering the claimant-employee;

(iii) The trust fund complies with section 302(c) of the Labor-Management Relations Act of 1947, 29 U.S.C. 186(c);

(iv) The trust agreement contains a subrogation provision entitling the fund to reimbursement for disability benefits paid to the claimant-employee who is entitled to compensation under the Longshoremen's Act;

(2) The statement shall also state the amount paid to the named claimant-employee and whether such disability benefit payments are continuing to be paid.

(3) If the claimant has signed a statement acknowledging receipt of disability benefits from the trust fund and/or a statement recognizing the trust fund's entitlement to a lien against compensation payments which may be received under the Longshoremen's and Harbor Worker's Compensation Act as a result of his present claim and for which the fund is providing disability payments, such statement(s) shall also be included with or attached to the application.

(c) Upon receipt of this application, the deputy commissioner shall, within a reasonable time, notify the claimant, the employer and/or its compensation insurance carrier that the request for a lien has been filed and each shall be provided with a copy of the application. If the claimant disputes the right of the trust fund to the lien or the amount stated, if any, he shall, within 30 days after receipt of the application or such other longer period as the deputy commissioner may set, notify the deputy commissioner and he shall be given an opportunity to challenge the right of the trust fund to, or the amount of, the asserted lien; notice to either the employer or its compensation insurance carrier shall constitute notice to both of them.

(d) If the claim for compensation benefits is resolved without a formal hearing and if there is no dispute over the amount of the lien or the right of the trust fund to the lien, the deputy commissioner may order and impose the lien and he shall notify all parties of the amount of the lien and manner in which it is to be paid.

(e) If the claimant's claim for compensation cannot be resolved informally, the deputy commissioner shall refer the case to the Office of the Chief Administrative Law Judge for a formal hearing, pursuant to section 19(d) of the Act, 33 U.S.C. 919(d), and 20 CFR 702.317. The deputy commissioner shall also submit therewith the application for the lien and all documents relating thereto.

(f) If the administrative law judge issues a compensation order in favor of the claimant, he may include therein a lien in favor of the trust fund if it is determined that the trust fund has satisfied all of the requirements of the Act and regulations.

(g) If the claim for compensation is not in dispute, but there is a dispute as to the right of the trust fund to a lien, or the amount of a lien, the deputy commissioner shall transfer the matter together with all documents relating thereto to the Office of the Chief Administrative Law Judge for a formal hearing pursuant to section 19(d) of the Act, 33 U.S.C. 919(d), and 20 CFR 702.317.

(h) In the event that either the deputy commissioner or the administrative law judge is not satisfied that the trust fund qualifies for a lien under section 17(b), he may require further evidence including but not limited to the production of the collective bargaining agreement, trust agreement, or portions thereof.

(i) Before any such lien is finally approved, if the trust fund has provided continued disability payments after the application for a lien has been filed, the trust fund shall submit a further certified statement showing the total amount paid to the claimant as disability payments. The claimant shall likewise be given an opportunity to contest the amount alleged in this subsequent statement.

(j) In approving a lien on compensation, the deputy commissioner or administrative law judge shall not order an initial payment to the trust fund in excess of the amount of the past due compensation. The remaining amount to which the trust fund is entitled may thereafter be deducted from the affected employee's subsequent compensation payments and paid to the trust fund, but any such payment to the trust fund shall not exceed 10 percent of the claimant-employee's bi-weekly compensation payments.

Subpart E—Claims Procedures

EMPLOYER'S REPORTS

§ 702.201 Reports from employers of employee's injury or death.

Within 10 days from the date of an employee's injury or death, or 10 days from the date an employer has knowledge of an employee's injury or death,

including any disease or death proximately caused by the employment, the employer shall furnish a report thereof to the deputy commissioner for the compensation district in which the injury or death occurred, and shall thereafter furnish such additional or supplemental reports as the deputy commissioner may request.

§ 702.202 Employer's report; form and contents.

The employer's report of an employee's injury or death shall be in writing and on a form prescribed by the Director for this purpose, and shall contain:

(a) The name, address, and business of the employer;

(b) The name, address, and occupation of the employee;

(c) The cause, nature, and other relevant circumstances of the injury or death;

(d) The year, month, day, and hour when, and the particular locality where, the injury or death occurred;

(e) Such other information as the Director may require.

§ 702.203 Employer's report; how given.

The employer's report, an original and one copy, may be furnished by delivering it to the appropriate office of the deputy commissioner, or by mailing it to said office.

§ 702.204 Employer's report; penalty for failure to furnish.

Any employer who fails or refuses to furnish any report required by § 702.201 shall be subject to a civil penalty not to exceed \$500 for each such failure or refusal, 33 U.S.C. 930(e).

§ 702.205 Employer's report; effect of failure to report upon time limitations.

Where the employer, or agent in charge of the business, or carrier has been given notice or has knowledge of an employee's injury or death, and fails, neglects, or refuses to file a report thereof as required by § 702.201, the time limitations provisions with respect to the filing of claims for compensation for disability or death (33 U.S.C. 913(a), and see § 702.212) shall not begin to run until such report shall have been furnished as required herein.

NOTICE

§ 702.206 Notice of employee's injury or death.

Every person claiming compensation under this Act shall first notify the deputy commissioner for the compensation district in which the injury or death occurred, and the injured or deceased employee's employer, of the fact of such injury or death. If the employer is a partnership, notice may be given to any partner, or if a corporation, to any authorized agent or officer thereof, or to the person in charge of the business at the place where the injury occurred.

§ 702.207 Notice; when given.

Notice shall be given within 30 days after the date of the injury or death, or within 30 days after the date the employee or beneficiary is aware, or in the exercise of reasonable diligence should have been aware, of a relationship between the injury or death and the employee's employment.

§ 702.208 Notice; by whom given.

Notice shall be given by the injured employee or someone on his behalf, or in the case of death, by the deceased employee's beneficiary or someone on his behalf.

§ 702.209 Notice; form and contents.

Notice shall be in writing on a form prescribed by the Director for this purpose; such form shall be made available to the employee or beneficiary by the employer. The notice shall be signed by the person authorized to give notice, and shall contain the name and address of the employee and a statement of the time, place, nature and cause of the injury or death.

§ 702.210 Notice; how given.

Notice shall be given by delivering it to the deputy commissioner and the employer, or by sending it by mail.

§ 702.211 Effect of failure to give notice.

Failure to give timely notice shall not bar any claim for compensation if: (a) The employer or carrier had knowledge of the injury or death and the deputy commissioner determines that the employer or carrier was not prejudiced thereby; or (b) the deputy commissioner excuses such failure on the ground that for some satisfactory reason such notice could not be given. The employer or carrier may not raise as a defense to a claim the failure to file a timely notice unless such defense is raised at the first hearing held on the claim.

CLAIMS

§ 702.212 Claims for compensation; time limitations.

Claims for compensation for disability or death shall be in writing and shall be filed with the deputy commissioner in the compensation district in which the injury or death occurred. Such claims may be filed anytime after the first 7 days of disability following an injury, or at anytime after death. However, the right to such compensation shall be barred unless a claim therefor is filed within 1 year of such injury or death.

§ 702.213 Claims; time limitations; exceptions.

(a) Where the claim is founded on a causal relationship between the disease or death and the employment, the 1-year time limitation specified in § 702.212 shall not begin to run until the employee or beneficiary is aware, or in the exercise of reasonable diligence should have been aware, of such relationship.

(b) Where payments of compensation have been made without an award on account of such injury or death, a claim shall be timely if filed within 1 year after the date of the last payment.

(c) Where a person entitled to compensation under the Act is mentally incompetent or a minor, the time limitation provision of § 702.212 shall not apply to a mentally incompetent person so long as such person has no guardian or other authorized representative, but § 702.212 shall be applicable from the date of appointment of such guardian or other representative. In the case of a minor who has no guardian before he becomes of age, time begins to run from the date he becomes of age.

(d) Where a person brings a suit at law or in admiralty to recover damages in respect of an injury or death, and recovery is denied plaintiff because he was an employee and defendant was an employer within the meaning of the Act, and such employer had secured compensation to such employee under the Act, the 1-year time limitation in § 702.212 shall not begin to run until the date of termination of such suit.

§ 702.214 Claims; time limitations; time to object.

Notwithstanding the requirements of § 702.212, failure to file a claim within the period prescribed in such section shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

§ 702.215 Claims; notification of employer of filing by employee.

Within 10 days after the filing of a claim for compensation for injury or death under the Act, the deputy commissioner shall give written notice thereof to the employer or carrier, served personally or by certified mail.

§ 702.216 Withdrawal of a claim.

(a) *Before adjudication of claim.* A claimant (or an individual who is authorized to execute a claim on his behalf) may withdraw his previously filed claim: *Provided, That:*

(1) He files with the deputy commissioner with whom the claim was filed a written request stating the reasons for withdrawal;

(2) The claimant is alive at the time his request for withdrawal is filed;

(3) The deputy commissioner approves the request for withdrawal as being for a proper purpose and in the claimant's best interest; and

(4) The request for withdrawal is filed on or before the date the OWCP makes a determination on the claim.

(b) *After adjudication of claim.* A claim for benefits may be withdrawn by a written request filed after the date the OWCP makes a determination on the claim: *Provided, That:*

(1) The conditions enumerated in paragraph (a) (1) through (3) of this section are met; and

(2) There is repayment of the amount of benefits previously paid because of the

claim that is being withdrawn or it can be established to the satisfaction of the Office that repayment of any such amount is assured.

(c) *Effect of withdrawal of claim.* Where a request for withdrawal of a claim is filed and such request for withdrawal is approved, such withdrawal shall be without prejudice to the filing of another claim, subject to the time limitation provisions of section 13 of the Act and of the regulations in this part.

NONCONTROVERTED CLAIMS

§ 702.231 Noncontroverted claims; payment of compensation without an award.

Unless the employer controverts his liability to pay compensation under the Act, he shall pay periodically, promptly, and directly to the person entitled thereto the benefits prescribed by the Act.

§ 702.232 Payments without an award; when; how paid.

The first installment of compensation shall become due on the 14th day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Compensation shall thereafter be paid in semimonthly installments, unless the deputy commissioner determines otherwise.

§ 702.233 Penalty for failure to pay without an award.

If any installment of compensation payable without an award is not paid within 14 days after it becomes due, there shall be added to such unpaid installment an amount equal to 10 per centum thereof which shall be paid at the same time as, but in addition to, such installment unless the employer files notice of controversion in accordance with § 702.261, or unless such nonpayment is excused by the deputy commissioner after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

§ 702.234 Report by employer of commencement and suspension of payments.

Immediately upon making the first payment of compensation, and upon the suspension of payments once begun, the employer shall notify the deputy commissioner having jurisdiction over the place where the injury or death occurred of the commencement or suspension of payments, as the case may be.

§ 702.235 Report by employer of final payment of compensation.

(a) Within 16 days after the final payment of compensation has been made, the employer, the insurance carrier, or where the employer is self-insured, the employer shall notify the deputy commissioner on a form prescribed by the Secretary, stating that such final payment has been made, the total amount of compensation paid, the name

and address of the person(s) to whom payments were made, the date of the injury or death and the name of the injured or deceased employee, and the inclusive dates during which compensation was paid.

(b) A "final payment of compensation" for the purpose of applying the penalty provision of § 702.236 shall be deemed any one of the following:

(1) The last payment of compensation made in accordance with a compensation order awarding disability or death benefits, issued by either a deputy commissioner or an administrative law judge;

(2) The payment of an agreed settlement approved under section 8(d) (A) or (B), of the Act, 33 U.S.C. 908(d);

(3) A lump sum payment of future compensation payments commuted under section 14(j) of the Act, 33 U.S.C. 914(j);

(4) The last payment made pursuant to an agreement reached by the parties through informal proceedings;

(5) Any other payment of compensation which anticipates no further payments under the Act.

§ 702.236 Penalty for failure to report termination of payments.

Any employer failing to notify the deputy commissioner of termination of payments in accordance with § 702.235 shall be assessed a civil penalty in the amount of \$100.

AGREED SETTLEMENTS

§ 702.241 Agreed settlements; monetary benefits.

(a) Whenever the deputy commissioner determines that it is for the best interests of an injured employee entitled to compensation he may approve agreed settlements of the interested parties discharging the liability of the employer for such compensation notwithstanding the provisions of section 15(b) and section 16 of the Act, 33 U.S.C. 915(b) and 916. If the employee should die from causes other than the injury after the deputy commissioner has approved an agreed settlement, the sum so approved shall be payable in the manner herein prescribed, to and for the benefit of the persons enumerated in section 8(d) of the Act, 33 U.S.C. 908(d).

(b) Application for approval of an agreed settlement under section 8(d) of the Act, 33 U.S.C. 908(d), shall be made in writing to the deputy commissioner by the parties in interest. The application shall set forth fully all facts necessary to disclose the status of the case and the reason for seeking approval of an agreed settlement under said section of the Act as well as the specific terms of such agreed settlement, and shall be accompanied by a medical report of examination of the employee, if a recent report is not of record in the office of the deputy commissioner.

(c) If the deputy commissioner determines that the injured employee is entitled to compensation and that the proposed agreed settlement according to such application is for the best interests of such employee, he shall file a compensation order making necessary find-

ings of fact relative to the character and quality of disability and the effect of same with respect to the employee's wage-earning capacity prior to approving such settlement and discharging the employer's liability for compensation payments. If such course is not practical the deputy commissioner shall determine the probable character and quality of disability according to the most recent evidence received. With such determination the deputy commissioner shall consider such other information as he may have upon the advisability of approving the agreed settlement and thereupon make his decision.

(d) This section is not intended to furnish generally a basis for the settlement of claims or as a mere convenience in disposing of cases.

§ 702.242 Agreed settlements; medical benefits.

(a) Whenever the Director or his designee determines that it is for the best interests of an injured employee entitled to medical benefits he may approve agreed settlements of the interested parties discharging the liability of the employer for such medical benefits, notwithstanding the provisions of section 16 of the Act, 33 U.S.C. 916. If the employee should die from causes other than the injury after an agreed settlement has been approved, the sum so approved shall be payable in the manner herein prescribed to, and for the benefit of, the persons enumerated in section 8(d) of the Act, 33 U.S.C. 908(d).

(b) Applications for approval of an agreed settlement with respect to medical benefits shall be made in writing and shall be submitted to the deputy commissioner by the parties in interest. The application shall set forth fully all facts necessary to disclose the status of the case and the reason for seeking approval of an agreed settlement, as well as the specific terms of the agreed settlement. Such application shall be accompanied by a report of a recent medical examination pertaining to the employee's condition and to his future need for medical attention relating to the injury. Applications, including all supporting papers, shall be submitted in duplicate.

(c) Upon receipt of such application, the deputy commissioner, after appropriate consultation with the interested parties, shall forward such application, together with his comments and recommendations, as to the character and quality of disability and such other information as may be pertinent to the appropriateness of approving the agreed settlement, to the Director, OWCP, for such action as the Director considers appropriate including the entry of a compensation order if it is deemed to be in the best interest of the injured employee.

CONTESTED CLAIMS

§ 702.251 Employer's controversion of the right to compensation.

Where the employer controverts the

right to compensation after notice or knowledge of the injury or death, or after receipt of a written claim, he shall give notice thereof, stating the reasons for controverting the right to compensation, using the form prescribed by the Director. Such notice, or answer to the claim, shall be filed with the deputy commissioner within 14 days from the date the employer receives notice or has knowledge of the injury or death. The original notice shall be sent to the deputy commissioner having jurisdiction, and a copy thereof shall be given or mailed to the claimant.

§ 702.252 Action by deputy commissioner upon receipt of notice of controversion.

Upon receiving the employer's notice of controversion, the deputy commissioner shall forthwith commence proceedings for the adjudication of the claim in accordance with the procedures set forth in Subpart C of this part.

CONTESTED CLAIMS

§ 702.261 Claimant's contest of actions taken by employer or carrier with respect to the claim.

Where the claimant contests an action by the employer or carrier reducing, suspending, or terminating benefits, including medical care, he should immediately notify the office of the deputy commissioner having jurisdiction, in person or in writing, and set forth the facts pertinent to his complaint.

§ 702.262 Action by deputy commissioner upon receipt of notice of contest.

Upon receipt of the claimant's notice of contest, the deputy commissioner shall forthwith commence proceedings for adjudication of the claim in accordance with the procedures set forth in Subpart C of this part.

§ 702.271 Review of discharge or other acts of discrimination.

(a) Under the provisions of section 49 of the Act, 33 U.S.C. 949a any employer or its duly authorized agent who discharges, or in any other manner discriminates against an employee because he or she has claimed or attempted to claim compensation or has testified or is about to testify in a proceeding under this Act, shall be liable to a penalty of not less than \$100 nor more than \$1,000.

(b) When a deputy commissioner receives a complaint from an employee alleging discrimination as defined under section 49, he or she shall notify the employer, and within five working days, initiate specific inquiry to determine all the facts and circumstances pertaining thereto. This may be accomplished by interviewing the employee, employer representatives and other parties who may have information about the matter. Interviews may be conducted by written correspondence, telephone or personal interview.

(c) If circumstances warrant, the dep-

uty commissioner may also conduct an informal conference on the issue as described in §§ 702.312-314.

(d) Any employee discriminated against is entitled to be restored to his employment and to be compensated by the employer for any loss of wages arising out of such discrimination provided that the employee is qualified to perform the duties of the employment. If it is determined that the employee has been discriminated against, the deputy commissioner shall also determine whether the employee is qualified to perform the duties of the employment. The deputy commissioner may use medical evidence submitted by the parties or he may arrange to have the employee examined by a physician selected by the deputy commissioner. The cost of the medical examination arranged for by the deputy commissioner may be charged to the special fund established by section 44, 33 U.S.C. 944.

§ 702.272 Informal recommendation by deputy commissioner.

(a) If the deputy commissioner determines that the employee has been discharged or suffered discrimination and is able to resume his or her duties, the deputy commissioner will recommend that the employer reinstate the employee and/or make such restitution as is indicated by the circumstances of the case, including compensation for any wage loss suffered as the result of the discharge or discrimination. The deputy commissioner may also assess the employer an appropriate penalty, as determined under authority vested in the deputy commissioner by the Act. If the deputy commissioner determines that no violation occurred he shall notify the parties of his findings and the reasons for recommending that the complaint be denied. If the employer and employee accept the deputy commissioner's recommendation, it will be incorporated in an order and mailed to each party within 10 days.

(b) If the parties do not agree to the recommendation, the deputy commissioner shall, within 10 days after receipt of the rejection, prepare a memorandum summarizing the disagreement, mail a copy to all interested parties, and shall within 14 days thereafter refer the case to the Office of the Chief Administrative Law Judge for hearing pursuant to § 702.317.

§ 702.273 Adjudication by Office of the Chief Administrative Law Judge.

The Office of Administrative Law Judges is responsible for final determinations of all disputed issues connected with the discrimination complaint, including the amount of penalty to be assessed, and shall proceed with a formal hearing as described in §§ 702.331 to 702.394.

§ 702.274 Employer's refusal to pay penalty.

In the event the employer refuses to pay the penalty assessed, the deputy

commissioner shall refer the complete administrative file to the Associate Director, Division of Longshore and Harbor Workers' Compensation, for subsequent transmittal to the Associate Solicitor for Employee Benefits, with the request that appropriate legal action be taken to recover the penalty.

§ 702.281 Third party action.

Every person claiming benefits under this Act or the representative shall promptly notify the employer and the deputy commissioner when:

(1) A claim is made that someone other than the employer or person or persons in its employ, is liable in damages to the claimant because of the injury or death and identify such party by name and address.

(2) Legal action is instituted by the claimant or the representative against some person or party other than the employer or a person or persons in his employ, on the ground that such other person is liable in damages to the claimant on account of the compensable injury and or death; specify the amount of damages claimed and identify the person or party by name and address.

(3) Any settlement, compromise or any adjudication of such claim has been effected and report the terms, conditions and amounts of such resolution of claim. *Caution: See 33 U.S.C. 933(g).*

Subpart C—Adjudication Procedures

GENERAL

§ 702.301 Scope of this subpart.

The regulations in this subpart govern the adjudication of claims in which the employer has filed a notice of controversy under § 702.251, or the employee has filed notice of contest under § 702.261. In the vast majority of cases, the problem giving rise to the controversy results from misunderstandings, clerical or mechanical errors, or mistakes of fact or law. Such problems seldom require resolution through formal hearings, with the attendant production of expert witnesses. Accordingly, by § 702.311 et seq., the deputy commissioners are empowered to amicably and promptly resolve such problems by informal procedures. Where there is a genuine dispute of fact or law which cannot be so disposed of informally, resort must be had to the formal hearing procedures as set forth beginning at § 702.331. Supplementary compensation orders, modifications, and interlocutory matters are governed by regulations beginning with § 702.371. Thereafter, appeals from compensation orders are discussed beginning with § 702.391 (the regulations of the Benefits Review Board are set forth in full in Part 802 of this title).

ACTION BY DEPUTY COMMISSIONERS

§ 702.311 Handling of claims matters by deputy commissioners; informal conferences.

The deputy commissioner is empowered to resolve disputes with respect to claims in a manner designed to protect

the rights of the parties and also to resolve such disputes at the earliest practicable date. This will generally be accomplished by informal discussions by telephone or by conferences at the deputy commissioner's office. Some cases will be handled by written correspondence. The regulations governing informal conferences at the deputy commissioner's office with all parties present are set forth below. When handling claims by telephone, or at the office with only one of the parties, the deputy commissioner and his staff shall make certain that a full written record be made of the matters discussed and that such record be placed in the administrative file. When claims are handled by correspondence, copies of all communications shall constitute the administrative file.

§ 702.312 Informal conferences; Called by and held before whom.

Informal conferences shall be called by the deputy commissioner or his designee assigned or reassigned the case and held before that same person, unless such person is absent or unavailable. When so assigned, the designee shall perform the duties set forth below assigned to the deputy commissioner, except that a compensation order following an agreement shall be issued only by a person so designated by the Director to perform such duty.

§ 702.313 Informal conferences; how called; when called.

Informal conferences may be called upon not less than 10 days' notice to the parties, unless the parties agree to meet at an earlier date. The notice may be given by telephone, but shall be confirmed by use of a written notice on a form prescribed by the Director. The notice shall indicate the date, time and place of the conference, and shall also specify the matters to be discussed. For good cause shown conferences may be rescheduled. A copy of such notice shall be placed in the administrative file.

§ 702.314 Informal conferences; how conducted; where held.

(a) No stenographic report shall be taken at informal conferences and no witnesses shall be called. The deputy commissioner shall guide the discussion toward the achievement of the purpose of such conference, recommending courses of action where there are disputed issues, and giving the parties the benefit of his experience and specialized knowledge in the field of workmen's compensation.

(b) Conferences generally shall be held at the deputy commissioner's office. However, such conferences may be held at any place which, in the opinion of the deputy commissioner, will be of greater convenience to the parties or to their representatives.

§ 702.315 Conclusion of conference; agreement on all matters with respect to the claim.

a. Following an informal conference at which agreement is reached on all

issues, the deputy commissioner shall, within 10 days after conclusion of the conference, embody the agreement in a memorandum or within 30 days issue a formal compensation order, to be filed and mailed in accordance with § 702.349. If either party requests that a formal compensation order be issued the deputy commissioner shall, within 30 days of such request, prepare, file, and serve such order in accordance with § 702.349. Where the problem was of such nature that it was resolved by telephone discussion or by exchange of written correspondence, the parties shall be notified by the same means that agreement was reached and the deputy commissioner shall prepare a memorandum or order setting forth the terms agreed upon. In either instance, when the employer or carrier has agreed to pay, reinstate or increase monetary compensation benefits, or to restore or appropriately change medical care benefits, such action shall be commenced immediately upon becoming aware of the agreement, and without awaiting receipt of the memorandum or the formal compensation order.

§ 702.316 Conclusion of conference; no agreement on all matters with respect to the claim.

When it becomes apparent during the course of the informal conference that agreement on all issues cannot be reached, the deputy commissioner shall bring the conference to a close, shall evaluate all evidence available to him or her, and after such evaluation shall prepare a memorandum of conference setting forth all outstanding issues, such facts or allegations as appear material and his or her recommendations and rationale for resolution of such issues. Copies of this memorandum shall then be sent by certified mail to each of the parties or their representatives, who shall then have 14 days within which to signify in writing to the deputy commissioner whether they agree or disagree with his or her recommendations. If they agree, the deputy commissioner shall proceed as in § 702.315(a). If they disagree (*Caution: See § 702.134*), then the deputy commissioner may schedule such further conference or conferences as, in his or her opinion, may bring about agreement; if he or she is satisfied that any further conference would be unproductive, or if any party has requested a hearing, the deputy commissioner shall prepare the case for transfer to the Office of the Chief Administrative Law Judge (*See § 702.317, §§ 702.331-351*).

§ 702.317 Preparation and transfer of the case for hearing.

A case is prepared for transfer in the following manner:

(a) The deputy commissioner shall furnish each of the parties or their representatives with a copy of a pre-hearing statement form.

(b) Each party shall, within 21 days after receipt of such form, complete it and return it to the deputy commissioner and serve copies on all other parties. Extensions of time for good cause may be granted by the deputy commissioner.

(c) Upon receipt of the completed forms, the deputy commissioner, after checking them for completeness and after any further conferences that, in his or her opinion, are warranted, shall transmit them to the Office of the Chief Administrative Law Judge by letter of transmittal together with all available evidence which the parties intend to submit at the hearing (exclusive of X-rays, slides and other materials not suitable for mailing which may be offered into evidence at the time of hearing); the materials transmitted shall not include any recommendations expressed or memoranda prepared by the deputy commissioner pursuant to § 702.316.

(d) If the completed pre-hearing statement forms raise new or additional issues not previously considered by the deputy commissioner or indicate that material evidence will be submitted that could reasonably have been made available to the deputy commissioner before he or she prepared the last memorandum of conference, the deputy commissioner shall transfer the case to the Office of the Chief Administrative Law Judge only after having considered such issues or evaluated such evidence or both and having issued an additional memorandum of conference in conformance with § 702.316.

(e) If a party fails to complete or return his or her pre-hearing statement form within the time allowed, the deputy commissioner may, at his or her discretion, transmit the case without that party's form. However, such transmittal shall include a statement from the deputy commissioner setting forth the circumstances causing the failure to include the form, and such party's failure to submit a pre-hearing statement form may, subject to rebuttal at the formal hearing, be considered by the administrative law judge, to the extent intransigence is relevant, in subsequent rulings on motions which may be made in the course of the formal hearing.

§ 702.318 The record; what constitutes; nontransferability of the administrative file.

For the purpose of any further proceedings under the Act, the formal record of proceedings shall consist of the hearing record made before the administrative law judge (see § 702.344). When transferring the case for hearing pursuant to § 702.317, the deputy commissioner shall not transfer the administrative file under any circumstances.

§ 702.319 Obtaining documents from the administrative file for reintroduction at formal hearings.

Whenever any party considers any document in the administrative file essential to any further proceedings under the Act, it is the responsibility of such party to obtain such document from the deputy commissioner and reintroduce it for the record before the administrative law judge. The type of document that may be obtained shall be limited to documents previously submitted to the deputy commissioner, including documents or forms with respect to notices, claims,

controversies, contests, progress reports, medical services or supplies, etc. The work products of the deputy commissioner or his staff shall not be subject to retrieval. The procedure for obtaining documents shall be for the requesting party to inform the deputy commissioner in writing of the documents he wishes to obtain, specifying them with particularity. Upon receipt, the deputy commissioner shall cause copies of the requested documents to be made and then: (a) Place the copies in the file together with the letter of request, and (b) promptly forward the originals to the requesting party. The handling of multiple requests for the same document shall be within the discretion of the deputy commissioner and with the cooperation of the requesting parties.

FORMAL HEARINGS

§ 702.331 Formal hearings; procedure initiating.

Formal hearings are initiated by transmitting to the Office of the Chief Administrative Law Judge the pre-hearing statement forms, the available evidence which the parties intend to submit at the formal hearing, and the letter of transmittal from the deputy commissioner as provided in § 702.316 and § 702.317.

§ 702.332 Formal hearings; how conducted.

Formal hearings shall be conducted by the administrative law judge assigned the case by the Office of the Chief Administrative Law Judge in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 554 et seq. All hearings shall be transcribed.

§ 702.333 Formal hearings; parties.

(a) The necessary parties for a formal hearing are the claimant and the employer or insurance carrier, and the administrative law judge assigned the case.

(b) The Solicitor of Labor or his designee may appear and participate in any formal hearing held pursuant to these regulations on behalf of the Director as an interested party.

§ 702.334 Formal hearings; representatives of parties.

The claimant and the employer or carrier may be represented by persons of their choice.

§ 702.335 Formal hearings; notice.

On a form prescribed for this purpose the Office of the Chief Administrative Law Judge shall notify the parties (See § 702.333) of the place and time of the formal hearing not less than 30 days in advance thereof.

§ 702.336 Formal hearings; new issues.

(a) If, during the course of the formal hearing, the evidence presented warrants consideration of an issue or issues not previously considered, the hearing may be expanded to include the new issue. If in the opinion of the adminis-

trative law judge the new issue requires additional time for preparation, the parties shall be given a reasonable time within which to prepare for it. If the new issue arises from evidence that has not been considered by the deputy commissioner, and such evidence is likely to resolve the case without the need for a formal hearing, the administrative law judge may remand the case to the deputy commissioner for his or her evaluation and recommendation pursuant to § 702.316.

(b) At any time prior to the filing of the compensation order in the case, the administrative law judge may in his discretion, upon the application of a party or upon his own motion, give notice that he will consider any new issue. The parties shall be given not less than 10 days' notice of the hearing on such new issue. The parties may stipulate that the issue may be heard at an earlier time and shall proceed to a hearing on the new issue in the same manner as on an issue initially considered.

§ 702.337 Formal hearings; change of time or place for hearings; postponements.

(a) Except for good cause shown, hearings shall be held at convenient locations not more than 75 miles from the claimant's residence.

(b) Once a formal hearing has been scheduled, continuances shall not be granted except in cases of extreme hardship or where attendance of a party or his or her representative is mandated at a previously scheduled judicial proceeding. Unless the ground for the request arises thereafter, requests for continuances must be received by the Chief Administrative Law Judge at least 10 days before the scheduled hearing date, must be served upon the other parties and must specify the extreme hardship or previously scheduled judicial proceeding claimed.

(c) The Chief Administrative Law Judge or the administrative law judge assigned to the case may change the time and place of the hearing, or temporarily adjourn a hearing, on his own motion or for good cause shown by a party. The parties shall be given not less than 10 days' notice of the new time and place of the hearing, unless they agree to such change without notice.

§ 702.338 Formal hearings; general procedures.

All hearings shall be attended by the parties or their representatives and such other persons as the administrative law judge deems necessary and proper. The administrative law judge shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the administrative law judge believes that there is relevant and material evidence available which has not been presented at the hearing, he may adjourn the hearing or, at any time, prior to the filing of the compensation order, reopen the hearing for the receipt of such evi-

dence. The order in which evidence and allegations shall be presented and the procedures at the hearing generally, except as these regulations otherwise expressly provide, shall be in the discretion of the administrative law judge and of such nature as to afford the parties a reasonable opportunity for a fair hearing.

§ 702.339 Formal hearings; evidence.

In making an investigation or inquiry, or conducting a hearing, the administrative law judge shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and these regulations; but may make such investigation or inquiry or conduct such hearing in such a manner as to best ascertain the rights of the parties.

§ 702.340 Formal hearings; witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation. The administrative law judge may examine the witnesses and shall allow the parties or their representatives to do so.

(b) No person shall be required to attend as a witness in any proceeding before an administrative law judge at a place more than 100 miles from his place of residence, unless his lawful mileage and fees for one day's attendance shall be paid or tendered to him in advance of the hearing date.

§ 702.341 Formal hearings; depositions; interrogatories.

The testimony of any witness, including any party represented by counsel, may be taken by deposition or interrogatory according to the Federal Rules of Civil Procedure as supplemented by local rules of practice for the federal district court for the judicial district in which the case is pending. However, such depositions or interrogatories must be completed within reasonable times to be fixed by the Chief Administrative Law Judge or the administrative law judge assigned to the case.

§ 702.342 Formal hearings; witness fees.

Witnesses summoned in a formal hearing before an administrative law judge or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States (33 U.S.C. 925).

§ 702.343 Formal hearings; oral argument and written allegations.

Any party upon request shall be allowed a reasonable time for presentation of oral argument and shall be permitted to file a pre-hearing brief or other written statement of fact or law. A copy of any such pre-hearing brief or other written statement shall be filed with the Chief Administrative Law Judge or the administrative law judge assigned to the case before or during the proceeding at which evidence is submitted to the administrative law judge and shall be served upon each other party. Post-hear-

ing briefs will not be permitted except at the request of the administrative law judge or upon averment on the record of a party that the case presents a specific novel or difficult legal or factual issue (or issues) that cannot be adequately addressed in oral summation. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge or by the party in his or her averment and shall be due from any party desiring to address such issue or issues within 15 days of the conclusion of the proceeding at which evidence is submitted to the administrative law judge. Enlargement of the time for filing such briefs shall be granted only if the administrative law judge is persuaded that the brief will be helpful to him or her and that the enlargement granted will not delay decision of the case.

§ 702.344 Formal hearings; record of hearing.

All formal hearings shall be open to the public and shall be stenographically reported. All evidence upon which the administrative law judge relies for his final decision shall be contained in the transcript of testimony either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, in whole or in material part, shall be incorporated into the record either by reference or as an appendix.

§ 702.345 Formal hearings; consolidated issues; consolidated cases.

(a) When one or more additional issues are raised by the administrative law judge pursuant to § 702.336, such issues may, in the discretion of the administrative law judge, be consolidated for hearing and decision with other issues pending before him.

(b) When two or more cases are transferred for formal hearings and have common questions of law or which arose out of a common accident, the Chief Administrative Law Judge may consolidate such cases for hearing.

§ 702.346 Formal hearings; waiver of right to appear.

If all parties waive their right to appear before the administrative law judge or to present evidence or argument personally or by representative, it shall not be necessary for the administrative law judge to give notice of and conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Chief Administrative Law Judge or the administrative law judge. Where such a waiver has been filed by all parties, and they do not appear before the administrative law judge personally or by representative, the administrative law judge shall make a record of the relevant written

evidence submitted by the parties, together with any pleadings they may submit with respect to the issues in the case. Such documents shall be considered as all of the evidence in the case and the decision shall be based on them.

§ 702.347 Formal hearings; termination.

(a) Formal hearings are normally terminated upon the conclusion of the proceeding at which evidence is submitted to the administrative law judge.

(b) In exceptional cases the Chief Administrative Law Judge or the administrative law judge assigned to the case may, in his or her discretion, extend the time for official termination of the hearing.

§ 702.348 Formal hearings; preparation of final decision and order; content.

Within 20 days after the official termination of the hearing as defined by § 702.347, the administrative law judge shall have prepared a final decision and order, in the form of a compensation order, with respect to the claim, making an award to the claimant or rejecting the claim. The compensation order shall contain appropriate findings of facts and conclusions of law with respect thereto, and shall be concluded with one or more paragraphs containing the order of the administrative law judge, his signature, and the date of issuance.

§ 702.349 Formal hearings; filing and mailing of compensation orders; disposition of transcripts.

The administrative law judge shall, within 20 days after the official termination of the hearing, deliver by mail, or otherwise, to the office of the deputy commissioner having original jurisdiction, the transcript of the hearing, other documents or pleadings filed with him with respect to the claim, together with his signed compensation order. Upon receipt thereof, the deputy commissioner, being the official custodian of all records with respect to such claims within his jurisdiction, shall formally date and file the transcript, pleadings, and compensation order (original) in his office. Such filing shall be accomplished by the close of business on the next succeeding working day, and the deputy commissioner shall, on the same day as the filing was accomplished, send by certified mail a copy of the compensation order to the parties and to representatives of the parties, if any. Appended to each such copy shall be a paragraph entitled "proof of service" containing the certification of the deputy commissioner that the copies were mailed on the date stated, to each of the parties and their representatives, as shown in such paragraph.

§ 702.350 Finality of compensation order.

Compensation orders shall become effective when filed in the office of the

deputy commissioner, and unless proceedings for suspension or setting aside of such orders are instituted within 30 days of such filing, shall become final at the expiration of the 30th day after such filing, as provided in section 21 of the Act 33 U.S.C. 921. If any compensation payable under the terms of such order is not paid within 10 days after it becomes due, section 14(f) of the Act requires that there be added to such unpaid compensation an amount equal to 20 percent thereof which shall be paid at the same time as, but in addition to, such compensation unless review of the compensation order is had as provided in such section 21 and an order staying payment has been issued by the Benefits Review Board or the reviewing court.

§ 702.351 Withdrawal of controversy of issues set for formal hearing; effect.

Whenever a party withdraws his controversy of the issues set for a formal hearing, the administrative law judge shall halt the proceedings upon receipt from said party of a signed statement to that effect and forthwith notify the deputy commissioner who shall then proceed to dispose of the case as provided for in § 702.315.

INTERLOCUTORY MATTERS, SUPPLEMENTARY ORDERS, AND MODIFICATIONS

§ 702.371 Interlocutory matters.

Compensation orders shall not be made or filed with respect to interlocutory matters of a procedural nature arising during the pendency of a compensation case.

§ 702.372 Supplementary compensation orders.

(a) In any case in which the employer or insurance carrier is in default in the payment of compensation due under any award of compensation, for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within 1 year after such default, apply in writing to the deputy commissioner for a supplementary compensation order declaring the amount of the default. Upon receipt of such application, the deputy commissioner shall institute proceedings with respect to such application as if such application were an original claim for compensation, and the matter shall be disposed of as provided for in § 702.315, or if agreement on the issue is not reached, then as in § 702.316 et seq.

(b) If, after disposition of the application as provided for in paragraph (a) of this section, a supplementary compensation order is entered declaring the amount of the default, which amount may be the whole of the award notwithstanding that only one or more installments is in default, a copy of such supplementary order shall be forthwith sent by certified mail to each of the parties and their representatives. Thereafter, the applicant may obtain and file with the clerk of the Federal district court for the judicial district where the injury occurred or the district in which the em-

ployed has his principal place of business or maintains an office, a certified copy of said order and may seek enforcement thereof as provided for by section 18 of the Act, 33 U.S.C. 918.

§ 702.373 Modification of awards.

(a) Upon his own initiative, or upon application of any party in interest, the deputy commissioner may review any compensation case in accordance with the procedure in Subpart C of this part, and after such review of the case under § 702.315, or review at formal hearings under the regulations governing formal hearings in Subpart C of this part, file a new compensation order terminating, continuing, reinstating, increasing or decreasing such compensation, or awarding compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made retroactive from the date of injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner or the administrative law judge.

(b) Review of a compensation case under this section may be made at any time prior to 1 year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to 1 year after the rejection of a claim.

(c) Review of a compensation case may be had only for the reason that there is a change in conditions or that there was a mistake in the determination of facts.

APPEALS

§ 702.391 Appeals; where.

Appeals may be taken to the Benefits Review Board, U.S. Department of Labor, Washington, D.C. 20210, by filing a notice of appeals with the office of the deputy commissioner for the compensation district in which the decision or order appealed from was filed and by submitting to the Board a petition for review of such decision or order, in accordance with the provisions of Part 802 of this Title 20.

§ 702.392 Appeals; what may be appealed.

An appeal raising a substantial question of law or fact may be taken from a decision with respect to a claim under the Act. Such appeals may be taken from compensation orders when they have been filed as provided for in § 702.349.

§ 702.393 Appeals; time limitations.

The notice of appeal (see § 702.391) shall be filed with the deputy commissioner within 30 days of the filing of the decision or order complained of, as defined and described in §§ 802.205 and

802.206 of this title. A petition for review of the decision or order is required to be filed within 30 days after receipt of the Board's acknowledgment of the notice of appeal, as provided in § 802.310 of this title.

§ 702.394 Appeals; procedure.

The procedure for appeals to the Benefits Review Board shall be as provided by the Board in its Rules of Practice and Procedure, set forth in Part 802 of this title.

Subpart D—Medical Care and Supervision

§ 702.401 Medical care defined.

Medical care shall include medical, surgical, and other attendance or treatment, nursing and hospital services, laboratory, X-ray and other technical services, medicines, crutches, or other apparatus and prosthetic devices, and any other medical service or supply, including the reasonable and necessary cost of travel incident thereto, which is recognized as appropriate by the medical profession for the care and treatment of the injury or disease.

§ 702.402 Employer's duty to furnish; duration.

It is the duty of the employer to furnish appropriate medical care for the employee's injury, and for such period as the nature of the injury or the process of recovery may require.

§ 702.403 Employee's right to choose physician; limitations.

The employee shall have the right to choose his attending physician from among those authorized by the Director, OWCP, to furnish such care and treatment. In determining the choice of a physician, consideration must be given to availability, the employee's condition and the method and means of transportation. Generally 25 miles from the place of injury, or the employee's home is a reasonable distance to travel, but other pertinent factors must also be taken into consideration.

§ 702.404 Physician defined.

The term "physician" includes doctors of medicine (MD), surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation shown by x-ray or clinical findings. Physicians defined in this part may interpret their own x-rays. All physicians in these categories are authorized by the Director to render medical care under the Act. Naturopaths, faith healers, and other practitioners of the healing arts which are not listed herein are not included within the term "physician" as used in this part.

§ 702.405 Selection of physician; emergencies.

Whenever the nature of the injury is such that immediate medical care is

required and the injured employee is unable to select a physician, the employer shall select a physician. Thereafter the employee may change physicians when he is able to make a selection. Such changes shall be made upon obtaining written authorization from the employer or, if consent is withheld, from the deputy commissioner.

§ 702.406 Change of physicians; non-emergencies.

Whenever the employee has made his initial, free choice of an attending physician, he may not thereafter change physicians without the prior written consent of the employer (or carrier) or the deputy commissioner. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for, and appropriate to, the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a showing of good cause for change.

§ 702.407 Supervision of medical care.

The Director, OWCP, through the deputy commissioners and their designees, shall actively supervise the medical care of an injured employee covered by the Act. Such supervision shall include:

(a) The requirement that periodic reports on the medical care being rendered be filed in the office of the deputy commissioner, the frequency thereof being determined by order of the deputy commissioner or sound judgment of the attending physician as the nature of the injury may dictate;

(b) The determination of the necessity, character and sufficiency of any medical care furnished or to be furnished the employee;

(c) The determination of whether a change of physicians, hospitals or other persons or locales providing treatment should be made or is necessary;

(d) The further evaluation of medical questions arising in any case under the Act, with respect to the nature and extent of the covered injury, and the medical care required therefor.

§ 702.408 Evaluation of medical questions; impartial specialists.

In any case in which medical questions arise with respect to the appropriate diagnosis, extent, effect of, appropriate treatment, and the duration of any such care or treatment, for an injury covered by the Act, the Director, OWCP, through the deputy commissioners having jurisdiction, shall have the power to evaluate such questions by appointing one or more especially qualified physicians to examine the employee, or in the case of death to make such inquiry as may be appropriate to the facts and circumstances of the case. The physician or physicians, including appropriate consultants, should report their findings with respect to the questions raised as expeditiously as possible. Upon receipt of such report, action appropriate there-with shall be taken.

§ 702.409 Evaluation of medical questions; results disputed.

Any party who is dissatisfied with such report may request a review or reexamination of the employee by one or more different physicians employed by or selected by the Director, and such review or reexamination shall be granted unless it is found that it is clearly unwarranted. Such review shall be completed within 2 weeks from the date ordered unless it is impossible to complete the review and render a report thereon within such time period. Upon receipt of the report of this additional review and reexamination, such action as may be appropriate shall forthwith be taken.

§ 702.410 Duties of employees with respect to special examinations.

(a) For any special examination required of an employee by §§ 702.408 and 702.409, the employee shall submit to such examination at such place as is designated in the order to report, but the place so selected shall be reasonably convenient for the employee.

(b) Where an employee fails to submit to an examination required by §§ 702.408 and 702.409, the deputy commissioner may order that no compensation otherwise payable shall be paid for any period during which the employee refuses to submit to such examination unless circumstances justified the refusal.

(c) Where an employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the deputy commissioner may by order suspend the payment of further compensation during such time as the refusal continues.

§ 702.411 Special examinations; nature of impartiality of specialists.

(a) The special examinations required by § 702.408 shall be accomplished in a manner designed to preclude prejudgment by the impartial examiner. No physician previously connected with the case shall be present, nor may any other physician selected by the employer, carrier, or employee be present. The impartial examiner may be made aware, by any party or by the OWCP, of the opinions, reports, or conclusions of any prior examining physician with respect to the nature and extent of the employee's impairment, its cause, or its effect upon the wage-earning capacity of the injured employee. If the Deputy Commissioner determines that, for good cause, such opinions, reports or conclusions shall be made available. Upon request, any party shall be given a copy of all materials made available to the impartial examiner.

§ 702.412 Special examinations; costs chargeable to employer or carrier.

(a) The Director or his designee ordering the special examination shall have the power in the exercise of his discretion, to charge the cost of the examination or review to the employer, to the insurance carrier, or to the special fund established by section 44 of the Act, 33 U.S.C. 944.

(b) The Director or his designee may also order the employer or the insurance carrier to provide the employee with the services of an attendant, where the deputy commissioner considers such services necessary, because the employee is totally blind, has lost the use of both hands, or both feet or is paralyzed and unable to walk, or because of other disability making the employee so helpless as to require constant attendance in the discretion of the deputy commissioner. Fees payable for such services shall be in accord with the provisions of § 702.412.

§ 702.413 Fees for medical services; prevailing community charges.

All fees charged by physicians for the care of persons covered by this Act, or any other charges for medical treatment or supplies within the purview of this Act, shall be limited to such charges for similar treatment, services or supplies as prevail in the community in which the physician, medical facility or supplier is located. In those jurisdictions where there are official State medical fee schedules for workers' compensation, they may be used as guidelines.

§ 702.414 Fees for medical services; unresolved disputes on prevailing charges.

The Director or his designee may, or upon the written complaint of an employer or carrier shall, investigate any fee for medical treatment, services or supplies that appears to be not in line with prevailing community charges for similar treatment, services or supplies. If, upon appropriate investigation, the Director or his designee determines that the fee or cost of service or supplies does not conform to prevailing community charges, the person claiming the fee or cost charge shall be informed of the discrepancy and given the opportunity to adjust the fee or cost charge within permissible limits.

§ 702.415 Fees for medical services; unresolved disputes on charges; procedure.

If, after investigation and ascertainment under § 702.414 that a fee or charge is not in accordance with prevailing community charges and the person claiming the fee or cost charge refuses to make the necessary adjustment, the matter shall then be referred by the Director to the Office of the Chief Administrative Law Judge for formal hearing in accordance with the procedures in Subpart C of this part.

§ 702.416 Fees for medical services; disputes; hearings; necessary parties.

At formal hearings held pursuant to § 702.415, the necessary parties shall be the person whose fee or cost charge is in question and the Director, or their representatives. The employer or carrier may also be represented, and other parties, or associations having an interest in the proceedings, may be heard, in the discretion of the administrative law judge.

§ 702.417 Fees for medical services; disputes; effect of adverse decision.

If the final decision and order upholds the finding of the Director that the fee or charge in dispute was not in accordance with prevailing community charges, the person claiming such fee or cost charge shall be given 30 days after filing of such decision and order to make the necessary adjustment. If such person still refuses to make the required readjustment, such person shall not be authorized to conduct any further treatments or examinations (if a physician) or to provide any other services or supplies (if by other than a physician). Any fee or cost charge subsequently incurred for services performed or supplies furnished shall not be a reimbursable medical expense under this subpart. This prohibition shall apply notwithstanding the fact that the services performed or supplies furnished were in all other respects necessary and appropriate within the provision of these regulations. Further, this prohibition shall extend to all other cases arising under this Act and shall not be limited to the case which gave rise to the adverse decision. Such debarred person shall remain debarred until such time as there is demonstrated to the satisfaction of the Director that fees will be charged in accordance with the prevailing community standards.

MEDICAL PROCEDURES

§ 702.418 Procedure for requesting medical care; employee's duty to notify employer.

As soon as practicable, but within 30 days after occurrence of an injury covered by the Act, or within 30 days after an employee becomes aware, or in the exercise of reasonable diligence should be aware, of the relationship between an injury or disease and his employment, the injured employee or someone on his behalf shall give written notice thereof to the deputy commissioner having jurisdiction over the place where the injury occurred and to the employer. If a form has been prescribed for such purpose it shall be used, if available and practicable under the circumstances. Notices filed under Subpart B of this part, if on the form prescribed by the Director for such purpose, satisfy the written notice requirements of this subpart.

§ 702.419 Action by employer upon acquiring knowledge or being given notice of injury.

Whenever an employer acquires knowledge of an employee's injury, through receipt of a written notice or otherwise, said employer shall forthwith authorize, in writing, appropriate medical care. If a form is prescribed for this purpose it shall be used whenever practicable.

§ 702.420 Issuance of authorization; binding effect upon insurance carrier.

The issuance of an authorization for treatment by the employer shall bind his insurance carrier to furnish and pay for such care and services.

§ 702.421 Effect of failure to obtain initial authorization.

An employee shall not be entitled to recover for medical services and supplies unless he shall have first requested authorization from his employer therefor. This prohibition shall not apply in emergency situations, nor shall it apply in cases where the employer (including the superintendent, foreman, or other person having charge of the work and having knowledge of the injury) refuses or neglects to authorize such care when requested by the employee.

§ 702.422 Effect of failure to report on medical care after initial authorization.

(a) Notwithstanding that medical care is properly obtained in accordance with these regulations, the employer and his insurance carrier shall not be liable for the expense thereof unless the physician rendering such initial care or services furnishes a report thereon to the employer and to the deputy commissioner having jurisdiction. The report required by this section shall be furnished within 10 days following the date of first treatment. The report shall be upon a form prescribed by the Director for such purpose.

(b) For good cause shown, the deputy commissioner or administrative law judge may excuse the failure to file the report within 10 days, and further, may make an award for the reasonable value of such medical care.

Subpart E—Vocational Rehabilitation

§ 702.501 Vocational rehabilitation; objective.

The objective of vocational rehabilitation is the return of permanently disabled persons to gainful employment commensurate with their physical or mental impairments, or both, through a program of reevaluation or redirection of their abilities, or retraining in another occupation, or selective job placement assistance.

§ 702.502 Vocational rehabilitation; action by deputy commissioners.

All injury cases which are likely to result in, or have resulted in, permanent disability, and which are of a character likely to require review by a vocational rehabilitation adviser on the staff of the Director, shall promptly be referred to such adviser by the deputy commissioner or his designee having charge of the case. A form has been prescribed for such purpose and shall be used. Medical data and other pertinent information shall accompany the referral.

§ 702.503 Vocational rehabilitation; action by adviser.

The vocational rehabilitation adviser, upon receipt of the referral, shall promptly consider the feasibility of a vocational referral or request for co-operative services from available resources or facilities, to include counseling, vocational survey, selective job

placement assistance, and retraining. Public or private agencies may be utilized in arranging necessary vocational rehabilitation services under the Federal Vocational Rehabilitation Act, 29 U.S.C. 31 et seq.

§ 702.504 Vocational rehabilitation; referrals to State Employment Agencies.

Vocational rehabilitation advisers will arrange referral procedures with State Employment Service units within their assigned geographical districts for the purpose of securing employment counseling, job classification, and selective placement assistance. Referrals shall be made to State Employment Offices based upon the following:

(a) Vocational rehabilitation advisers will screen cases so as to refer only those disabled employees who are considered to have employment potential;

(b) Only employees will be referred who have permanent, compensable disabilities resulting in a significant vocational handicap and loss of wage earning capacity;

(c) Disabled employees, whose initial referral to former private employers did not result in a job reassignment or, in a job retention, shall be referred for employment counseling and/or selective placement unless retraining services consideration is requested;

(d) The vocational rehabilitation advisers shall arrange for employees' referrals if it is ascertained that they may benefit from registering with the State Employment Service;

(e) Referrals will be made to appropriate State Employment Offices by letter, including all necessary information and a request for a report on the services provided the employee when he registers;

(f) The injured employee shall be advised of available job counseling services and informed that he is being referred for employment and selective placement;

(g) A followup shall be made within 60 days on all referrals to assure uniform reporting by State agencies on cases referred for a vocational survey.

§ 702.505 Vocational rehabilitation; referrals to other public and private agencies.

Referrals to such other public and private agencies providing assistance to disabled persons such as public welfare agencies, Public Health Services facilities, social services units of the Veterans Administration, the Social Security Administration, and other such agencies, shall be made by the vocational rehabilitation adviser, where appropriate, on an individual basis when requested by disabled employees. Such referrals do not provide for a service cost reimbursement by the Department of Labor.

§ 702.506 Vocational rehabilitation; training.

Vocational rehabilitation training shall be planned in anticipation of a short, realistic, attainable vocational objective terminating in remunerable employment, and in restoring wage-earning capacity

or increasing it materially. The following procedures shall apply in arranging for or providing training:

(a) The vocational rehabilitation adviser shall arrange for and develop all vocational training programs;

(b) Training programs shall be developed to meet the varying needs of eligible beneficiaries, and may include courses at colleges, technical schools, training at rehabilitation centers, on-the-job training, or tutorial courses. The course shall be pertinent to the occupation for which the employee is being trained.

(c) Training may be terminated if the injured employee fails to cooperate with the Department of Labor or with the agency supervising his course of training. The employee shall be counseled before training is terminated.

(d) Reports shall be required at periodic intervals on all persons in approved training programs.

§ 702.507 Vocational rehabilitation; maintenance allowance.

(a) An injured employee who, as a result of injury, is or may be expected

to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the Director is being rendered fit to engage in a remunerative occupation, shall be paid additional compensation necessary for this maintenance, not exceeding \$25 a week. The expense shall be paid out of the special fund established in section 44 of the Act, 33 U.S.C. 944. The maximum maintenance allowance shall not be provided on an automatic basis, but shall be based on the recommendation of a State agency that a claimant is unable to meet additional costs by reason of being in training.

(b) When required by reason of personal illness or hardship, limited periods of absence from training may be allowed without terminating the maintenance allowance. A maintenance allowance shall be terminated when it is shown to the satisfaction of the Director that a trainee is not complying reasonably with the terms of the training plan or is absenting himself without good cause from training so as to materially interfere

with the accomplishment of the training objective.

§ 702.508 Vocational rehabilitation; confidentiality of information.

The following safeguards will be observed to protect the confidential character of information released regarding an individual undergoing rehabilitation:

(a) Information will be released to other agencies from which an injured employee has requested services only if such agencies have established regulations assuring that such information will be considered confidential and will be used only for the purpose for which it is provided;

(b) Interested persons and agencies have been advised that any information concerning rehabilitation program employees is to be held confidential;

(c) A rehabilitation employee's written consent is secured for release of information regarding disability to a person, agency, or establishment seeking the information for purposes other than the approved rehabilitation planning with such employee.

Insurance Regulations (20 CFR 703)

- Sec.
703.001 Scope of part.
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703.102 Applications for authority to write insurance; how filed; evidence to be submitted; other requirements.
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AUTHORIZATION OF SELF-INSURERS

- 703.301 Employers who may be authorized as self-insurers.
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ISSUANCE OF CERTIFICATES OF COMPLIANCE

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703.501 Issuance of certificates of compliance.
703.502 Same; employer operating temporarily in another compensation district.
703.503 Return of certificates of compliance.

AUTHORITY: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 33 U.S.C. 932, 937, 939; 42 U.S.C. 1651 et seq.; 36 D.C. Code 501 et seq.; 43 U.S.C. 1331; 5 U.S.C. 8171 et seq.; Secretary of Labor's Order No. 13-71, 36 FR 8755.

SOURCE: 38 FR 26873, Sept. 26, 1973, unless otherwise noted.

§ 703.001 Scope of part.

This Part 703 contains the regulations of the OWCP governing the authorization of insurance carriers, the authorization of self-insurers, and the issuance of certificates of compliance. Such provisions are required by the LHWCA, but in almost every instance apply, and hereby are applied, to the extensions of the LHWCA. In those few instances where a separate provision is required, tailored to meet the specific requirements of one of the extended acts, such separate provisions are placed in the succeeding parts of this subchapter.

§ 703.002 Forms.

Any information required by the regulations in this part to be submitted to the OWCP shall be submitted on such forms as the Director may deem appropriate and may authorize from time to time for such purpose.

AUTHORIZATION OF INSURANCE CARRIERS

§ 703.101 Types of companies which may be authorized by the OWCP.

The OWCP will consider for the granting of authority to write insurance under the Longshoremen's and Harbor Workers' Compensation Act and its extensions the application of any stock company, mutual company or association, or any other person or fund, while authorized under the laws of the United States or of any State to insure workmen's compensation. The term "carrier" as used in this part means any person or fund duly authorized to insure workmen's compensation benefits under said Act, or its extensions.

§ 703.102 Applications for authority to write insurance; how filed; evidence to be submitted; other requirements.

An application for authority to write insurance under this Act shall be made in writing, signed by an officer of the applicant duly authorized to make such application, and transmitted to the Office of Workmen's Compensation Programs, U.S. Department of Labor, Washington, D.C. 20211. Such application shall be accompanied by full and complete information regarding the history and experience of such applicant in the writing of workmen's compensation insurance, together

with evidence that it has authority in its charter or form of organization to write such insurance, and evidence that the applicant is currently authorized to insure workmen's compensation liability under the laws of the United States or of any State. The statements of fact in each application and in the supporting evidence shall be verified by the oath of the officer of the applicant who signs such application. Each applicant shall state in its application the area or areas in which it intends to do business. In connection with any such application the following shall be submitted, the Office reserving the right to call for such additional information as it may deem necessary in any particular case:

(a) A copy of the last annual report made by the applicant to the insurance department or other authority of the State in which it is incorporated, or the State in which its principal business is done.

(b) A certified copy from the proper State authorities of the paper purporting to show the action taken upon such report, or such other evidence as the applicant desires to submit in respect of such report, which may obviate delay caused by an inquiry of the OWCP of the State authorities relative to the standing and responsibility of the applicant.

(c) A full and complete statement of its financial condition, if not otherwise shown, and, if a stock company, shall show specifically its capital stock and surplus.

(d) A copy of its charter or other formal outline of its organization, its rules, its bylaws, and other documents, writings, or agreements by and under which it does business, and such other evidence as it may deem proper to make a full exposition of its affairs and financial condition.

§ 703.103 Stock companies holding Treasury certificates of authority.

A stock company furnishing evidence that it is authorized to write workmen's compensation insurance under the laws of the United States or of any State, which holds a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds, unless requested to do so, need not transmit to the Office with its application copies of such financial reports as are on file in the Department of the Treasury. The acceptance by that Department of such a company will be considered by the Office in conjunction with the application of such company, provided there has been compliance with the other requirements of the regulations in this part.

§ 703.104 Applicants currently authorized to write insurance under the extensions of the LHWCA.

Any applicant currently authorized by the Office to write insurance under any extension of the LHWCA need not sup-

port its application under the LHWCA or any other LHWCA extension with the evidence required by the regulations in this part, except the form of policy and endorsement which it proposes to use, unless specifically requested by the Office, but instead its application may refer to the fact that it has been so authorized.

§ 703.105 Copies of forms of policies to be submitted with application.

With each application for authority to write insurance there shall be submitted for the approval of the Office copies of the forms of policies which the applicant proposes to issue in writing insurance under the LHWCA, or its extensions, to which shall be attached the appropriate endorsement to be used in connection therewith.

§ 703.106 Certificate of authority to write insurance.

No corporation, company, association, person, or fund shall write insurance under this Act without first having received from the OWCP a certificate of authority to write such insurance. Any such certificate issued by the Office, after application therefor in accordance with these regulations, may authorize the applicant to write such insurance in a limited territory as determined by the Office. Any such certificate may be suspended or revoked by the Office prior to its expiration for good cause shown, but no suspension or revocation shall affect the liability of any carrier already incurred. Good cause shall include, without limitation, the failure to maintain in such limited territory a regular business office with full authority to act on all matters falling within the Act, and the failure to promptly and properly perform the carrier's responsibilities under the Act and these regulations, with special emphasis upon lack of promptness in making payments when due, upon failure to furnish appropriate medical care, and upon attempts to offer to, or urge upon, claimants inequitable settlements. A hearing may be requested by the aggrieved party and shall be held before the Director or his representative prior to the taking of any adverse action under this section.

§ 703.107 Period of certificate of authority.

No certificate of authority to write insurance under said Act and the regulations in this part shall be issued by the Office for a period in excess of 18 months. The expiration date which shall be stated in the certificate of authority, shall fall on the 30th day of June.

§ 703.108 Applications for reauthorization.

Any carrier holding an unexpired certificate of authority and desiring reauthorization to write insurance for the period of a year from the expiration of such certificate shall apply to the OWCP by letter over the signature of an authorized officer for such a certificate of authority. No evidence of the financial condition of such carrier need be furnished unless requested by the Office after the application is received. The Office may

require such carrier to submit, for Office consideration in connection with such reauthorization, evidence or explanation relating to the experience and practice of such carrier in the conduct of its affairs with respect to the said Act, or with reference to the fidelity and punctuality of the performance by such carrier of its past or current obligations under the law. Such application, to avoid a break in the period of authorization of the carrier to write such insurance, should be filed with the Office not later than June 1 of each year.

§ 703.109 Longshoremen's endorsement; see succeeding parts for endorsements for extensions.

(a) The following form of endorsement applicable to the standard workmen's compensation and employer's liability policy, shall be used, if required by the OWCP, with the form of policy approved by the Office for use by an authorized carrier:

For attachment to Policy No.

The obligations of the policy include the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 et seq., and all laws amendatory thereof or supplementary thereto which may be or become effective while this policy is in force.

The company will be subject to the provisions of 33 U.S.C. 935. Insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the company from payment of compensation and other benefits lawfully due for disability or death sustained by an employee during the life of the policy.

The company agrees to abide by all the provisions of this Act, and all lawful rules, regulations, orders, and decisions of the Office of Workmen's Compensation Programs, U.S. Department of Labor, unless and until set aside, modified, or reversed by appropriate appellate authority as provided for by said Act.

This endorsement shall not be cancelled prior to the date specified in this policy for its expiration until at least 30 days have elapsed after a notice of cancellation has been sent to the Deputy Commissioner and to this employer.

All terms, conditions, requirements, and obligations, expressed in this policy or in any other endorsement attached thereto which are not inconsistent with or inapplicable to the provisions of this endorsement are hereby made a part of this endorsement as fully and completely as if wholly written herein.

§ 703.110 Other forms of endorsements and policies.

Where the form of endorsement prescribed by § 703.109 is not appropriate when used in conjunction with a form of policy approved for use by the Office no modification thereof shall be used unless specifically approved by the Office. Where the form of policy is designed to include therein the obligations of the insurer under said Act without the use of the appropriate endorsements, the policy shall contain the provisions required to be included in any of the endorsements. Such a policy, however, shall not be used until expressly approved by the Office.

§ 703.111 Submission of new forms of policies for approval; other endorsements.

No new forms of policies or modification of existing forms of policies shall be used by an insurer authorized by the Office under the regulations in this part to write insurance under said Act except after submission to and approval by the Office. No endorsement altering any provisions of a policy approved by the Office shall be used except after submission to and approval by the Office.

§ 703.112 Terms of policies.

A policy or contract of insurance shall be issued for the term of not less than 1 year from the date that it becomes effective, but if such insurance be not needed except for a particular contract or operation, the term of the policy may be limited to the period of such contract or operation.

§ 703.113 Marine insurance contracts.

A longshoremen's policy, or the longshoremen's endorsement provided for by § 703.109 for attachment to a marine policy, may specify the particular vessel or vessels in respect of which the policy applies and the address of the employer at the home port thereof. The report of the issuance of a policy or endorsement required by § 703.116 to be made by the carrier shall be made to the deputy commissioner for the compensation district in which the home port of such vessel or vessels is located, and such report shall show the name and address of the owner as well as the name or names of such vessel or vessels.

§ 703.114 Notice of cancellation.

Cancellation of a contract or policy of insurance issued under authority of said Act shall not become effective otherwise than as provided by 33 U.S.C. 936(b); and notice of a proposed cancellation shall be given to the deputy commissioner and to the employer in accordance with the provisions of 33 U.S.C. 912(c), 30 days before such cancellation is intended to be effective.

§ 703.115 Discharge by the carrier of obligations and duties of employer.

Every obligation and duty in respect of payment of compensation, the providing of medical and other treatment and care, the payment or furnishing of any other benefit required by said Act and in respect of the carrying out of the administrative procedure required or imposed by said Act or the regulations in this part upon an employer shall be discharged and carried out by the carrier except that the prescribed report of injury or death shall be sent by the employer to the deputy commissioner and to the insurance carrier as required by 33 U.S.C. 930. Such carrier shall be jointly responsible with the employer for the submission of all reports, notices, forms, and other administrative papers required by the deputy commissioner or the Office in the administration of said Act to be submitted by the employer, but any form or paper so submitted where required therein shall contain in addition to the

name and address of the carrier, the full name and address of the employer on whose behalf it is submitted. Notice to or knowledge of an employer of the occurrence of the injury or death shall be notice to or knowledge of such carrier. Jurisdiction of the employer by a deputy commissioner, the Office, or appropriate appellate authority under said Act shall be jurisdiction of such carrier. Any requirement under any compensation order, finding, or decision shall be binding upon such carrier in the same manner and to the same extent as upon the employer.

§ 703.116 Report by carrier of issuance of policy or endorsement.

Each carrier shall report to the deputy commissioner assigned to a compensation district each policy and endorsement issued by it to an employer who carries on operations in such compensation district. The report shall be made in such manner and on such form as the district or the Office may require.

§ 703.117 Report; by whom sent.

The report of issuance of a policy and endorsement provided for in § 703.116 shall be sent by the home office of the carrier, except that any carrier may authorize its agency or agencies in any compensation district to make such reports to the deputy commissioner, provided the carrier shall notify the deputy commissioner in such district of the agencies so duly authorized.

§ 703.118 Agreement to be bound by report.

Every applicant for authority to write insurance under the provisions of this Act, or for the renewal of that authority, shall be deemed to have included in its application an agreement that the acceptance by the deputy commissioner of a report of the issuance of a policy of insurance, as provided for by § 703.116, shall bind the carrier to full liability for the obligations under this Act of the employer named in said report, and every certificate of authority to write insurance under this Act shall be deemed to have been issued by the Office upon consideration of the carrier's agreement to become so bound. It shall be no defense to this agreement that the carrier failed or delayed to issue the policy to the employer covered by this report.

§ 703.119 Report by employer operating temporarily in another compensation district.

Where an employer having operations in one compensation district contemplates engaging in work subject to the Act in another compensation district, his carrier may submit to the deputy commissioner of such latter district a report pursuant to § 703.116 containing the address of the employer in the first mentioned district with the additional notation "No present address in ----- compensation district. Certificate requested when address given."

§ 703.120 Name of one employer only shall be given in each report.

A separate report of the issuance of a policy and endorsement, provided for by § 703.116, shall be made for each employer covered by a policy. If a policy is issued insuring more than one employer, a separate report for each employer so covered shall be sent to the deputy commissioner concerned, with the name of only one employer on each such report.

§ 703.121 Multiple policies covering the same employer in the same compensation district prohibited; action upon receipt of a second report.

An employer operating within any compensation district shall have such operations in that district insured by not more than one insurance carrier. Accordingly, where a report provided for by § 703.116 is received, and where reports on file show that a named employer is insured by another insurance carrier under a policy with an unexpired term, the deputy commissioner shall inform the employer of the pre-existing coverage and of OWCP's prohibition against multiple policies.

AUTHORIZATION OF SELF-INSURERS

§ 703.301 Employers who may be authorized as self-insurers.

The Office will consider for the granting of authority to secure by self-insurance the payment of compensation under the Longshoremen's and Harbor Workers' Compensation Act, or its extensions, any employer who, pursuant to the regulations in this part, furnishes to the Office satisfactory proof of such employer's ability to pay compensation directly, and who agrees to immediately cancel any existing policy as of the time of the OWCP's approval of the employer to be self-insured, or who does not become otherwise insured under this Act. The succeeding regulations relating to self-insurers require the deposit of security in the form either of an indemnity bond or negotiable securities (at the option of the employer) of a kind and in an amount determined by the Office, and prescribe the conditions under which such deposit shall be made. The term "self-insurer" as used in these regulations means any employer securing compensation in accordance with the provisions of 33 U.S.C. 932(a)(2) and with these regulations.

§ 703.302 Application for authority to become a self-insurer; how filed; information to be submitted; other requirements.

Application for authority to become a self-insurer may be made by any employer desiring such privilege and shall be addressed to the OWCP and be made on a form provided by the Office. Such application shall contain: (a) A statement of the employer's payroll report for the preceding 12 months; (b) a statement of the average number of employees engaged in employment within the purview of the LHWCA or any of its extensions for the preceding 12 months; (c)

a statement of the number of injuries to such employees resulting in disability of more than 7 days' duration, or in death, during each of 3 years next preceding the date of the application; (d) an itemized statement of the assets and liabilities of the employer; (e) a description of the facilities maintained or the arrangements made for the medical and hospital care of injured employees; and (f) a statement describing the provisions and maximum amount of any excess or catastrophic insurance. The Office may in its discretion require the applicant to submit such further information or such evidence as the Office may deem necessary to have in order to enable it to give adequate consideration to such application. Such application shall be signed by the applicant over his typewritten name and if the applicant is not an individual, by an officer of the applicant duly authorized to make such application over his typewritten name and official designation and shall be sworn to by him. If the applicant is a corporation, the corporate seal shall be affixed. The application shall be filed with the OWCP national office in Washington, D.C. The regulations in this part shall be binding upon each applicant hereunder and the applicant's consent to be bound by all requirements of the said regulations shall be deemed to be included in and a part of the application, as fully as though written therein.

§ 703.303 Decision upon application of employer; deposit of negotiable securities or indemnity bond.

The decision of the Office to grant an application of an employer for authority to pay compensation under said Act as a self-insurer will be transmitted to the applicant on a form prescribed by the Office. Such grant shall be conditioned upon a deposit of security in the form of an indemnity bond or of negotiable securities in an amount fixed by the Office, and the execution and filing of an agreement and undertaking in the form prescribed by the Office, as required by § 703.304.

§ 703.304 Filing of agreement and undertaking.

The applicant for the privilege of self-insurance shall as a condition precedent to receiving authorization to act as a self-insurer, execute and file with the Office an agreement and undertaking in a form prescribed and provided by the Office in which the applicant shall agree: (a) To pay when due, as required by the provisions of said Act, all compensation payable on account of injury or death of any of its employees injured within the purview of said Act; (b) in such cases to furnish medical, surgical, hospital, and other attendance, treatment and care as required by the provisions of said Act; (c) to deposit with the Office an indemnity bond in the amount which the Office shall fix, or to deposit negotiable securities as provided for by the regulations in this part in the amount which the Office shall fix, accordingly as elected in the application; (d) to authorize the Office to sell such negotiable securities so depos-

ited or any part thereof and from the proceeds thereof to pay such compensation, medical, and other expenses and any accrued penalties imposed by law as it may find to be due and payable; and (e) to obtain and maintain, if required by the Office, excess or catastrophic insurance, in amounts to be determined by the Office.

§ 703.305 Decision upon application of employer; furnishing of indemnity bond or deposit of negotiable securities required.

The applicant for the privilege of self-insurance, as a condition precedent to receiving authorization to act as a self-insurer, shall give security for the payment of compensation and the discharge of all other obligations under the said Act, in the amount fixed by the Office, which may be in the form of an indemnity bond with sureties satisfactory to the Office, or of a deposit of negotiable securities as provided in the regulations in this part. The amount of such security so to be fixed and required by the Office shall be such as the Office shall deem to be necessary and sufficient to secure the performance by the applicant of all obligations imposed upon him as an employer by the Act. In fixing the amount of such security the Office will take into account the financial standing of the employer, the nature of the work in which he is engaged, the hazard of the work in which the employees are employed, the payroll exposure, and the accident experience as shown in the application and the Office's records, and any other facts which the Office may deem pertinent. Additional security may be required at any time in the discretion of the Office. The indemnity bond which is required by these regulations shall be in such form, and shall contain such provisions, as the Office may prescribe: *Provided*, That only surety companies approved by the United States Treasury Department under the laws of the United States and the rules and regulations governing bonding companies may act as sureties on such indemnity bonds.

§ 703.306 Kinds of negotiable securities which may be deposited; conditions of deposit; acceptance of deposits.

An applicant for the privilege of self-insurance electing to deposit negotiable securities to secure his obligations under said Act in the amount fixed by the Office under the regulations in this part shall deposit any negotiable securities acceptable as security for the deposit of public monies of the United States under regulations issued by the Secretary of the Treasury. (See 31 CFR 203.7 and 203.8.) The approval, valuation, acceptance, and custody of such securities is hereby committed to the several Federal Reserve Banks and the Treasurer of the United States when authorized under the regulations in this part to receive deposits of such securities.

§ 703.307 Deposits of negotiable securities with Federal Reserve banks or the Treasurer of the United States; authority to sell such securities; interest thereon.

Deposits of securities provided for by the regulations in this part shall be made with any Federal Reserve bank or any branch of a Federal Reserve bank designated by the Office, or the Treasurer of the United States, and shall be held subject to the order of the Office with power in the Office, in its discretion in the event of default by the said self-insurer, to collect the interest and the principal as they may become due, to sell the securities or any of them as may be required to discharge the obligations of the self-insurer under said Act and to apply the proceeds to the payment of any compensation or medical expense for which the self-insurer may be liable. The Office may, however, whenever it deems it unnecessary to resort to such securities for the payment of compensation, authorize the self-insurer to collect interest on the securities deposited by him.

§ 703.308 Substitution and withdrawal of negotiable securities.

No substitution or withdrawal of negotiable securities deposited by a self-insurer shall be made except upon authorization by the Office. A self-insurer discontinuing business, or discontinuing operations within the purview of said Act, or providing security for the payment of compensation by insurance under the provisions of said Act may apply to the Office for the withdrawal of securities deposited under the regulations in this part. With such application shall be filed a sworn statement setting forth: (a) A list of all outstanding cases in each compensation district in which compensation is being paid, with the names of the employees and other beneficiaries, giving a description of causes of injury or death, and a statement of the amount of compensation paid; (b) a similar list of all pending cases in which no compensation has as yet been paid; and (c) a similar list of all cases in which injury or death has occurred within 1 year prior to such application or in which the last payment of compensation was made within 1 year prior to such application. In such cases withdrawals may be authorized by the Office of such securities as in the opinion of the Office may not be necessary to provide adequate security for the payment of outstanding and potential liabilities of such self-insurer under said Act.

§ 703.309 Increase or reduction in the amount of indemnity bond or negotiable securities.

Whenever in the opinion of the Office the principal sum of the indemnity bond filed or the amount of negotiable securities deposited by a self-insurer is insufficient to afford adequate security for the payment of compensation and medical expenses under said Act, the self-insurer shall, upon demand by the Office, file such additional indemnity bond or de-

posit under the regulations in this part such additional amount of negotiable securities as the Office may require. At any time upon application of a self-insurer, or on the initiative of the Office, when in its opinion the facts warrant, the principal sum of an indemnity bond required to be given or the amount of negotiable securities required to be deposited may be reduced. A self-insurer seeking such reduction shall furnish such information as the Office may request relative to his current affairs, the nature and hazard of the work of his employees, the amount of the payroll of his employees engaged in maritime employment within the purview of the said Act, his financial condition, his accident experience, and such other evidence as may be deemed material, including a record of payments of compensation made by him.

§ 703.310 Reports required of self-insurers; examination of accounts of self-insurer.

At such times as the Office may require or prescribe, each self-insurer shall submit such of the following reports as may be requested:

(a) A sworn itemized statement of the self-insurer's assets and liabilities, or a balance sheet.

(b) A sworn statement showing by classifications the payroll of employees of the self-insurer who are engaged in employment within the purview of the LHWCA or any of its extensions.

(c) A sworn statement covering the 6 months' period preceding the date of such report, listing by compensation districts all death and injury cases which have occurred during such period, together with a report of the status of all outstanding claims, showing the particulars of each case.

Whenever it deems it to be necessary, the Office may inspect or examine the books of account, records, and other papers of a self-insurer for the purpose of verifying any financial statement submitted to the Office by self-insurer or verifying any information furnished to the Office in any report required by this section, or any other section of the regulations in this part, and such self-insurer shall permit the Office or its duly authorized representative to make such an inspection or examination as the Office shall require. In lieu of this requirement the Office may in its discretion accept an adequate report of a certified public accountant.

§ 703.311 Period of authorization as self-insurer; renewals.

No initial authorization as a self-insurer shall be granted for a period in excess of 18 months, and the expiration date thereof shall fall on the 30th day of June. A self-insurer who has made an adequate deposit of negotiable securities as required by the Office under the regulations in this part will be reauthorized for the ensuing fiscal year without additional security if the Office finds that his experience as a self-insurer warrants such action. A self-insurer who currently

has on file an indemnity bond, will receive from the Office on or about May 10 of each year a bond form for execution in contemplation of reauthorization, and the submission of such bond duly executed in the amount indicated by the Office will be deemed and treated as such self-insurer's application for reauthorization for the ensuing fiscal year; the privilege of such self-insurer will, however, terminate with the termination of his current authorization unless such duly executed indemnity bond be submitted not later than June 30.

§ 703.312 Revocation of privilege of self-insurance.

The Office may for good cause shown suspend or revoke the authorization of any self-insurer. Failure by a self-insurer to comply with any provision or requirement of law or of the regulations in this part, or with any lawful order or communication of the Office, or the failure or insolvency of the surety on his indemnity bond, or impairment of financial responsibility of such self-insurer, shall be deemed good cause for such suspension or revocation.

ISSUANCE OF CERTIFICATES OF COMPLIANCE

§ 703.501 Issuance of certificates of compliance.

Every employer who has secured the payment of compensation as required by

33 U.S.C. 932 and by the regulations in this part may request a certificate from the deputy commissioner in the compensation district in which he has operations, and for which a certificate is required by 33 U.S.C. 937, showing that such employer has secured the payment of compensation. Only one such certificate will be issued to an employer in a compensation district, and it will be valid only during the period for which such employer has secured such payment. An employer so desiring may have photocopies of such a certificate made for use in different places within the compensation district. Two forms of such certificates have been provided by the Office, one form for use where the employer has obtained insurance generally under these regulations, and one for use where the employer has been authorized as a self-insurer.

§ 703.502 Same; employer operating temporarily in another compensation district.

A deputy commissioner receiving a report of the issuance of a policy of insurance with the notation authorized by § 703.119, will file such report until he receives from the insured employer named therein a request for certificate of compliance, giving the address of the

employer within the compensation district of such deputy commissioner. Upon receipt of such a request the deputy commissioner will send the proper certificate of compliance to such employer at such address.

§ 703.503 Return of certificates of compliance.

Upon the termination by expiration, cancellation or otherwise, of a policy of insurance issued under the provisions of law and these regulations, or the revocation or termination of the privilege of self-insurance granted by the Office, all certificates of compliance issued on the basis of such insurance or self-insurance shall be void and shall be returned by the employer to the deputy commissioner issuing them with a statement of the reason for such return. An employer holding certificate of compliance under an insurance policy which has expired, pending renewal of such insurance need not return such certificate of compliance if such expired insurance is promptly replaced. An employer who has secured renewal of insurance upon the expiration of policy under said Act or whose self-insurance thereunder is reauthorized without a break in the continuity thereof need not return an expired certificate of compliance.

Special Provisions for LHWCA Extensions (20 CFR 704)

Sec.

- 704.001 Extensions covered by this part.
704.002 Scope of part.

DEFENSE BASE ACT

- 704.101 Administration; compensation districts.
704.102 Commutation of payments to aliens and nonresidents.
704.103 Removal of certain minimums when computing or paying compensation.
704.151 DBA endorsement.

DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION ACT

- 704.201 Administration; compensation districts.
704.251 DCCA endorsement.

OUTER CONTINENTAL SHELF LANDS ACT

- 704.301 Administration; compensation districts.
704.351 OCSLA endorsement.

NONAPPROPRIATED FUND INSTRUMENTALITIES ACT

- 704.401 Administration; compensation districts.
704.451 NFIA endorsement.

AUTHORITY: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 33 U.S.C. 939; 42 U.S.C. 1651 et seq.; 36 District of Columbia Code 501 et seq.; 43 U.S.C. 1331; 5 U.S.C. 8171 et seq.; Secretary of Labor's Order No. 13-71, 36 FR 8755.

SOURCE: 38 FR 26877, Sept. 26, 1973, unless otherwise noted.

§ 704.001 Extensions covered by this part.

- (a) Defense Base Act (DBA).
(b) District of Columbia Workmen's Compensation Act (DCCA).
(c) Outer Continental Shelf Lands Act (OCSLA).
(d) Nonappropriated Fund Instrumentalities Act (NFIA).

§ 704.002 Scope of part.

The regulations governing the administration of the LHWCA as set forth in Parts 702 and 703 of this subchapter govern the administration of the LHWCA extensions (see § 704.001) in nearly every respect, and are not repeated in this Part 704. Such special provisions as are necessary to the proper administration of each of the extensions are set forth in this Part 704. To the extent of any inconsistency between regulations in Parts 702 and 703 of this subchapter and those in this Part 704, the latter supersedes those in Part 702 and 703 of this subchapter.

DEFENSE BASE ACT

§ 704.101 Administration; compensation districts.

For the purpose of administration of this Act areas assigned to the compensation districts established for administration of the Longshoremen's and Harbor Workers' Compensation Act as set forth in Part 702 of this subchapter shall be extended in the following manner to include

(a) Canada, east of the 75th degree west longitude, Newfoundland, and Greenland are assigned to District No. 1.

(b) Canada, west of the 75th degree and east of the 110th degree west longitude, is assigned to District No. 10.

(c) Canada, west of the 110th degree west longitude, and all areas in the Pacific Ocean north of the 45th degree north latitude are assigned to District No. 14.

(d) All areas west of the continents of North and South America (except coastal islands) to the 60th degree east longitude, except for Iran, are assigned to District No. 15.

(e) Mexico, Central and South America (including coastal islands); areas east of the continents of North and South America to the 60th degree east longitude, including Iran, and any other areas or locations not covered under any other district office, are assigned to District No. 2.

§ 704.102 Commutation of payments to aliens and nonresidents.

Authority to commute payments to aliens and nonnationals who are not residents of the United States and Canada, section 2(b) of the Defense Base Act, 42 U.S.C. 1652(b), though separately stated in this Act, is identical in language to section 9(g) of the Longshoremen's Act. Thus, except for the different statutory citation, the LHWCA regulation at § 702.142 of this subchapter shall apply.

§ 704.103 Removal of certain minimums when computing or paying compensation.

The minimum limitation on weekly compensation for disability established by section 6 of the LHWCA, 33 U.S.C. 906, and the minimum limit on the average weekly wages on which death benefits are to be computed under section 9 of the LHWCA, 33 U.S.C. 909, shall not apply in computing compensation and death benefits under this Act; section 2(a), 42 U.S.C. 1652(a).

§ 704.151 DBA endorsement.

The following form of endorsement applicable to the standard workmen's compensation and employers' liability policy shall be used, if required by the OWCP, with the form of policy approved by the Office for use by an authorized carrier:

For attachment to Policy No. _____

The obligations of the policy include the Longshoremen's and Harbor Workers' Compensation Act, as extended by the provisions of the Defense Base Act, and all laws amendatory thereof or supplementary thereto which may be or become effective while this policy is in force.

The Company will be subject to the provisions of 33 U.S.C. 935. Insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the Company from payment of compensation and other benefits lawfully due for disability or death sustained by an employee during the life of the policy.

The Company agrees to abide by all the provisions of said Acts and all lawful rules, regulations, orders, and decisions of the Office of Workmen's Compensation Programs, De-

partment of Labor, unless and until set aside, modified, or reversed by appropriate appellate authority as provided for by said Acts.

This endorsement shall not be canceled prior to the date specified in this policy for its expiration until at least 30 days have elapsed after a notice of cancellation has been sent to the Deputy Commissioner and to this employer.

All terms, conditions, requirements, and obligations expressed in this policy or in any other endorsement attached thereto which are not inconsistent with or inapplicable to the provisions of this endorsement are hereby made a part of this endorsement as fully and completely as if wholly written herein.

DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION ACT

§ 704.201 Administration; compensation districts.

For the purpose of administration of this Act, the District of Columbia shall be the compensation district and is designated as District No. 40.

§ 704.251 DCCA endorsement.

The following form of endorsement applicable to the standard workmen's compensation and employer's liability policy shall be used, if required by the OWCP, with the form of policy approved by the Office for use by an authorized carrier:

For attachment to Policy No. _____

The obligations of the policy include the District of Columbia Workmen's Compensation Act, and the applicable provisions of the Longshoremen's and Harbor Workers' Compensation Act, and all laws amendatory of either of said Acts or supplementary thereto which may be or become effective while this policy is in force.

The company will be subject to the provisions of 33 U.S.C. 935. Insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the company from payment of compensation and other benefits lawfully due for disability or death sustained by an employee during the life of the policy.

The company agrees to abide by all the provisions of said District of Columbia Workmen's Compensation Act and all lawful rules, regulations, orders, and decisions of the Office of Workmen's Compensation Programs, Department of Labor, unless and until set aside, modified, or reversed by appropriate appellate authority as provided for by said Act.

This endorsement shall not be canceled prior to the date specified in this policy for its expiration until at least 30 days have elapsed after a notice of cancellation has been sent to the Deputy Commissioner for the District of Columbia and to this employer.

All terms, conditions, requirements, and obligations expressed in this policy or in any other endorsement attached thereto which are not inconsistent with or inapplicable to the provisions of this endorsement are hereby made a part of this endorsement as fully and completely as if wholly written herein.

OUTER CONTINENTAL SHELF LANDS ACT

§ 704.301 Administration; compensation districts.

For the purpose of administration of this Act, the compensation districts established under the Longshoremen's and Harbor Workers' Compensation Act as

set forth in Part 702 of this subchapter shall administer this Act, and their jurisdiction for this purpose is extended, where appropriate, to include those parts of the Outer Continental Shelf adjacent to the State or States in such districts having adjacent shelf areas.

§ 704.351 OCSLA endorsement.

The following form of endorsement applicable to the standard workmen's compensation and employer's liability policy shall be used, if required by the OWCP, with the form of policy approved by the Office for use by an authorized carrier:

For attachment to Policy No.

The obligations of the policy include the Longshoremen's and Harbor Workers' Compensation Act, as extended by the Outer Continental Shelf Lands Act, and all the laws amendatory thereof or supplementary thereto which may be or become effective while this policy is in force.

The company will be subject to the provisions of 33 U.S.C. 935. Insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the company from payment of compensation and other benefits lawfully due for disability or death sustained by an employee during the life of the policy.

The company agrees to abide by all the provisions of said laws and all the lawful rules, regulations, orders and decisions of the Office of Workmen's Compensation Programs, Department of Labor, until set aside, modified, or reversed by appropriate appellate authority as provided for by said Acts.

This endorsement shall not be canceled

prior to the date specified in this policy for its expiration until at least 30 days have elapsed after a notice of cancellation has been sent to the Deputy Commissioner and to his employer.

All terms, conditions, requirements, and obligations expressed in this policy or in any other endorsement attached thereto which are not inconsistent with or inapplicable to the provisions of this endorsement are hereby made a part of this endorsement as fully and completely as if wholly written herein.

NONAPPROPRIATED FUND INSTRUMENTALITIES ACT

§ 704.401 Administration; compensation districts.

For the purpose of administration of this Act within the continental United States, Hawaii, and Alaska, the compensation districts established for administration of the Longshoremen's and Harbor Workers' Compensation Act as set forth in Part 702 of this subchapter are established as the administrative districts under this Act. For the purpose of administration of this Act outside the continental United States, Alaska, and Hawaii, the compensation districts established for such overseas administration of the Defense Base Act as set forth in § 704.101 are established as the administrative districts under this Act.

§ 704.451 NFIA endorsement.

The following form of endorsement applicable to the standard workmen's compensation and employer's liability

policy shall be used, if required by the OWCP, with the form of policy approved by the Office for use by an authorized carrier:

For attachment to Policy No.

The obligations of the policy include the Longshoremen's and Harbor Workers' Compensation Act, as extended by the Nonappropriated Fund Instrumentalities Act, and all of the laws amendatory thereof or supplementary thereto which may be or become effective while this policy is in force.

The company will be subject to the provisions of 33 U.S.C. 935. Insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the company from payment of compensation and other benefits lawfully due for disability or death sustained by an employee during the life of the policy.

The company agrees to abide by all the provisions of said Acts and all the lawful rules, regulations, orders, and decisions of the Office of Workmen's Compensation Programs, Department of Labor, unless and until set aside, modified, or reversed by appropriate appellate authority as provided for by said Acts.

This endorsement shall not be canceled prior to the date specified in this policy for its expiration until at least 30 days have elapsed after a notice of cancellation has been sent to the Deputy Commissioner and to the within named employer.

All terms, conditions, requirements, and obligations expressed in this policy or in any other endorsement attached thereto which are not inconsistent with or inapplicable to the provisions of this endorsement are hereby made a part of this endorsement as fully and completely as if wholly written herein.

REGULATIONS GOVERNING THE BENEFITS REVIEW BOARD

Establishment and Operation of the Board (20 CFR 801)

Sec.

- 801.1 Purpose and scope of this part.
- 801.2 Definitions and use of terms.
- 801.3 Applicability of this part to 20 CFR Part 802.

ESTABLISHMENT AND AUTHORITY OF THE BOARD

- 801.101 Establishment.
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REPRESENTATION

- 801.401 Representation before the Board.
- 801.402 Representation of Board in court proceedings.

AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 33 U.S.C. 901 et seq., 30 U.S.C. 901, et seq.

INTRODUCTORY

§ 801.1 Purpose and scope of this part.

This part 801 describes the establishment and the organizational structure of the Benefits Review Board of the Department of Labor, sets forth the general rules applicable to operation of the Board, and defines terms used in this chapter.

§ 801.2 Definitions and use of terms.

(a) For purposes of this chapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) "Acts" means the several Acts listed in §§ 801.102 and 802.101 of this chapter, as amended and extended, unless otherwise specified.

(2) "Board" means the Benefits Review Board established by section 21 of the LHWCA (33 U.S.C. 921) as described in § 801.101, and as provided in this part and Secretary of Labor's Order No. 38-72 (38 FR 90).

(3) "Chairman" or "Chairman of the Board" means Chairman of the Benefits Review Board.

(4) "Secretary" means the Secretary of Labor.

(5) "Department" means the Department of Labor.

(6) "Judge" means an administrative law judge appointed as provided in 5

U.S.C. 3105 and subpart B of 5 C.F.R. part 930 (see 37 FR 16787), who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings whenever necessary in respect of any claim for benefits or compensation arising under the Acts. The term also includes a hearing officer appointed pursuant to Pub. L. 94-504 who is authorized to conduct formal hearings and adjudicate claims for benefits under title IV of the Federal Mine Safety and Health Act, as amended; except that a person appointed pursuant to Pub. L. 94-504 shall not be considered an administrative law judge for any period after March 1, 1979.

(7) "Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Department of Labor.

(8) "Director" means the Director of the Office of Workers' Compensation Programs of the Department of Labor (hereinafter OWCP).

(9) "Deputy commissioner" means a person appointed as provided in sections 39 and 40 of the LHWCA or his designee, authorized by the Director to make decisions and orders in respect to claims arising under the Acts.

(10) "Party" or "Party in interest" means the Secretary or his designee and any person or business entity directly affected by the decision or order from which an appeal to the Board is taken.

(11) "Day" means calendar day.

(b) The definitions contained in this part shall not be considered to derogate from the definitions of terms in the respective Acts.

(c) The definitions pertaining to the Acts contained in the several parts of chapter VI of this title 20 shall be applicable to this chapter as is appropriate.

§ 801.3 Applicability of this part to 20 CFR Part 802.

Part 802 of title 20, Code of Federal Regulations, contains the rules of practice and procedure of the Board. This part 801, including the definitions and usages contained in § 801.2, is applicable to part 802 of this chapter as appropriate.

ESTABLISHMENT AND AUTHORITY OF THE BOARD

§ 801.101 Establishment.

By Pub. L. 92-576, 86 Stat. 1251, in an amendment made to section 21 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 921), there was established effective November 26, 1972, a Benefits Review Board, which is composed of members appointed by the Secretary of Labor.

§ 801.102 Review authority.

The Board is authorized, as provided in 33 U.S.C. 921(b), as amended, to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions or orders with respect to claims for compensation or benefits arising under the following Acts, as amended and extended:

(1) The Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 et seq.;

(2) The Defense Base Act (DBA), 42 U.S.C. 1651 et seq.;

(3) The District of Columbia Workmen's Compensation Act (DCWCA), 36 D.C. Code 501 et seq.;

(4) The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 et seq.;

(5) The Nonappropriated Fund Instrumentalities Act (NFIA), 5 U.S.C. 8171 et seq.;

(6) Title IV, Section 415 and Part C of the Federal Mine Safety and Health Act of 1977 (Pub. L. 95-164, 91 Stat. 1290) (formerly the FCMHSA of 1969) as amended by the Black Lung Benefits Reform Act of 1977 (92 Stat. 95), and the Black Lung Benefits Revenue Act of 1977, Pub. L. 95-227, 92 Stat. 11.

§ 801.103 Organizational placement.

As prescribed by the statute, the functions of the Benefits Review Board are quasi-judicial in nature and involve review of decisions made in the course of the administration of the above statutes by the Employment Standards Administration in the Department of Labor. It is accordingly found appropriate for organizational purposes to place the Board in the Office of the Under Secretary and it is hereby established in that Office, which shall be responsible for providing necessary funds, personnel, supplies, equipment, and records services for the Board.

§ 801.104 Operational rules.

The Under Secretary may promulgate such rules and regulations as may be necessary or appropriate for effective operation of the Benefits Review Board as an independent quasi-judicial body in accordance with the provisions of the statute.

MEMBERS OF THE BOARD

§ 801.201 Composition of the Board.

(a) The Board is composed of three members appointed by the Secretary from among individuals who are especially qualified to serve thereon.

(b) The member designated by the Secretary as Chairman of the Board shall serve as chief administrative officer of the Board.

(c) The two remaining members shall be the associate members of the Board.

(d) All members of the Board shall serve indefinite terms to be determined in the discretion of the Secretary.

§ 801.202 Interim appointments.

(a) *Acting Chairman.* In the event that the Chairman of the Board is temporarily unavailable to perform his or her duties as prescribed in this chapter VII, he, she, or the Board shall designate one associate member to serve as Acting Chairman for the duration of the Chairman's absence.

(b) *Temporary members.* In the event that a member of the Board is temporarily unable to carry out his or her responsibilities because of disqualification, illness, or for any other reason, the Under Secretary of Labor may, in his or her discretion, appoint a qualified individual to serve in the place of such member for the duration of that member's inability to serve.

§ 801.203 Disqualification of Board members.

(a) During the period in which the Chairman or the other members serve on the Board, they shall not consider any matter in which they were involved prior to such period nor shall they be involved, other than as Board members, in any matter being considered by the Board. After completion of their service on the Board, they shall not become involved in any matter which had been considered by them as Board members.

(b) No Board member shall conduct or participate in any proceeding in a

case in which he or she is prejudiced or partial with respect to any party, or where he or she has any interest in the matter pending for decision before him or her. Notice of any objection which a party may have to any Board member who will participate in the proceeding shall be made by such party at the earliest opportunity. The Board member shall consider such objection and shall, in his or her discretion, either proceed with the case or withdraw.

ACTION BY THE BOARD

§ 801.301 Quorum; votes.

For the purpose of carrying out its functions under the Acts, two members of the Board shall constitute a quorum, and official action can be taken only on the concurring vote of at least two members.

§ 801.302 Procedural rules.

Procedural rules for performance by the Board of its review functions and for insuring an adequate record for any judicial review of its orders, and such amendments to the rules as may be necessary from time to time, shall be promulgated by the Benefits Review Board with the approval of the Under Secretary. Such rules shall incorporate and implement the procedural requirements of section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act.

§ 801.303 Location of Board's proceedings.

The Board shall hold its proceedings in Washington, D.C., unless for good

cause the Board orders that proceedings in a particular matter be held in another location.

§ 801.304 Business hours.

The office of the Clerk of the Board at Washington, D.C., shall be open from 9 a.m. to 5:30 p.m. on all days, except Saturdays, Sundays, and legal holidays, for the purpose of receiving notices of appeal, petitions for review, other pleadings, motions, and other papers.

REPRESENTATION

§ 801.401 Representation before the Board.

On any issues requiring representation of the Secretary, the Director, Office of Workers' Compensation Programs, a deputy commissioner, or an administrative law judge before the Board, such representation shall be provided by attorneys designated by the Solicitor of Labor. Representation of all other persons before the Board shall be as provided by the rules of practice and procedure promulgated under § 801.302 (see part 802 of this chapter).

§ 801.402 Representation of Board in court proceedings.

Except in proceedings in the Supreme Court of the United States, any representation of the Benefits Review Board in court proceedings shall be by attorneys designated by the Solicitor of Labor.

Rules of Practice and Procedure (20 CFR 802)

Subpart A—General Provisions

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AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 33 U.S.C. 901 et seq., 30 U.S.C. 901 et seq.

Subpart A—General Provisions

INTRODUCTORY

§ 802.101 Purpose and scope of this part.

(a) The purpose of part 802 is to establish the rules of practice and procedure governing the operation of the Benefits Review Board.

(b) Except as otherwise provided, the rules promulgated in this part apply to all appeals taken by any party from decisions or orders with respect to claims for compensation or benefits under the following Acts:

(1) The Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 et seq.;

(2) The Defense Base Act (DBA), 42 U.S.C. 1651 et seq.;

(3) The District of Columbia Workmen's Compensation Act (DCWCA), 36 D.C. Code 501 et seq.;

(4) The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 et seq.;

(5) The Nonappropriated Fund Instrumentalities Act (NFIA), 5 U.S.C. 8171 et seq.;

(6) Title IV, section 415 and part C of the Federal Mine Safety and Health Act of 1977 (Pub. L. 95-164, 91 Stat. 1290) (formerly the FCMHSA of 1969), as amended by the Black Lung Benefits Reform Act of 1977 (92 Stat. 95) and the Black Lung Benefits Revenue Act of 1977 (92 Stat. 11).

§ 802.102 Applicability of part 801 of this chapter.

Part 801 of this chapter VII sets forth rules of general applicability covering the composition, authority, and operation of the Benefits Review Board and definitions applicable to this chapter. The provisions of part 801 of this chapter are fully applicable to this part 802.

§ 802.103 Powers of the Board.

(a) *Conduct of proceedings.* Pursuant to section 27(a) of the LHWCA, the Board shall have power to preserve and enforce order during any proceedings for determination or adjudication of entitlement to compensation or benefits or for liability for payment thereof, and to do all things in accordance with law which may be necessary to enable the Board to effectively discharge its duties.

(b) *Contumacy.* Pursuant to section 27(b) of the LHWCA, if any person in proceedings before the Board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, the Board shall certify the facts to the Federal district court having jurisdiction in the place in which it is sitting (or to the U.S. District Court for the District of Columbia if it is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

§ 802.104 Consolidation; severance.

(a) Cases may be consolidated for purposes of an appeal upon the motion of any party or upon the Board's own motion where there exist common parties, common questions of law or fact or both, or in such other circumstances as justice and the administration of the Acts require.

(b) Upon its own motion, or upon motion of any party, the Board may, for good cause, order any proceeding severed with respect to some or all issues or parties.

§ 802.105 Stay of payment pending appeal.

As provided in section 14(f) of the LHWCA and sections 415 and 422 of the Black Lung Benefits Act, the payment of the amounts required by an award of compensation or benefits shall not be stayed or in any way delayed pending final decision in any proceeding before the Board unless so ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer, coal mine operator or insurance carrier. Any order of the Board permitting any stay shall contain a specific finding, based upon evidence submitted to the Board and identified by reference thereto, that irreparable injury would result to such employer, operator or insurance carrier, and specify the nature and extent of the injury.

Subpart B—Prereview Procedures

COMMENCING APPEAL: PARTIES

§ 802.201 Who may file an appeal.

(a) *A party.* Any party adversely affected by a decision or order issued pursuant to one of the Acts may appeal that decision or order to the Board by filing a notice of appeal pursuant to this subpart. (See § 802.205 (b) and (c) for exceptions to this general rule.) A party who files a notice of appeal shall be deemed the petitioner.

(b) **Representative parties.** In the event that a party has not attained the age of 18, is not mentally competent, or is physically unable to file and pursue or defend an appeal, the Board may permit any legally appointed guardian, committee, or other appropriate representative to file and pursue or defend the appeal, or it may in its discretion appoint such representative for purposes of the appeal. The Board may require any legally appointed representative to submit evidence of that person's authority.

§ 802.202 Appearances, attorneys, legal counsel.

(a) Any party or intervenor or any representative duly authorized pursuant to § 802.201(b) may appear before and/or submit written argument to the Board by attorney or any other duly authorized person, including any representative of an employee organization. For each instance in which appearance before the Board is made by some person other than the party or his legal guardian, committee, or representative, there shall be filed with the Chairman of the Board a statement in writing, signed by the party to be represented, authorizing such assistance or representation.

(b) Any individual petitioner or respondent or his duly authorized representative pursuant to § 802.201(b) or an officer of any corporate party or a member of any partnership or joint venture which is a party may participate in the appeal on his or her own behalf, or on behalf of such business entity.

§ 802.203 Fees for services.

(a) No fee for services rendered on behalf of a claimant in the successful pursuit or successful defense of an appeal shall be valid unless approved pursuant to 33 U.S.C. 928, as amended.

(b) All fees for services rendered in the successful pursuit or successful defense of an appeal on behalf of a claimant shall be subject to the provisions and prohibitions contained in 33 U.S.C. 928, as amended.

(c) A fee application shall be complete in all respects, containing all of the following specific information:

(1) A complete statement of the extent and character of the necessary work done.

(2) The professional status of each person who performed services on behalf of the claimant (e.g., attorney; law clerk; or paralegal);

(3) The number of hours devoted by each person who performed services on behalf of the claimant and the dates on which such services were performed in each category of work;

(4) The normal billing rate for each person who performed services on behalf of the claimant. This rate shall be based on what is reasonable and customary in the area where the ser-

vices were rendered for a person of that particular professional status.

(d) Any fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, the amount of benefits awarded, and when the fee is to be assessed against the claimant, shall also take into account the financial circumstances of the claimant. A fee shall not necessarily be computed by multiplying time devoted to work by an hourly rate.

(e) No contract pertaining to the amount of a fee shall be recognized.

(f) A fee application shall be served on all other parties. Any party may respond to the application within 10 days of his receipt of the application. The response shall be filed with the Board and served on all other parties.

NOTICE OF APPEAL

§ 802.204 Place for filing notice of appeal.

Any notice of appeal shall be sent by mail or otherwise presented to the Clerk of the Board in Washington, D.C. A copy shall be served on the deputy commissioner who filed the decision or order being appealed and on all other parties by the party who files a notice of appeal. Proof of service of the notice of appeal on the deputy commissioner and other parties shall be included with the notice of appeal.

§ 802.205 Time for filing.

(a) A notice of appeal, other than a cross-appeal or a protective appeal, must be filed within 30 days from the date upon which a decision or order has been filed in the office of the deputy commissioner pursuant to section 19(e) of the LHWCA or in such other office as may be established in the future (see §§ 702.349 and 725.478 of this title).

(b) (1) If a timely notice of appeal is filed by a party, any other party may initiate a cross-appeal or protective appeal by filing a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time prescribed by paragraph (a) of this section, whichever period last expires.

(2) When a decision or order is favorable to a party (i.e., the prevailing party), but contains findings of fact or conclusions of law, or both, which are adverse to him or her, the prevailing party may become potentially aggrieved when the other party, who is in fact aggrieved, files a notice of appeal pursuant to paragraph (a) of this section. Therefore, the prevailing party may file an appeal pursuant to paragraph (b) of this section to protect its right to challenge the adverse findings of fact or conclusions of law, or both, in the same proceeding.

(c) Failure to file within the period specified in paragraph (a) or (b) of this section (whichever is applicable)

shall foreclose all rights to review by the Board with respect to the case or matter in question. Any untimely appeal will be summarily dismissed by the Board for lack of jurisdiction.

§ 802.205A. Effect of motion for reconsideration on time for appeal.

(a) A timely motion for reconsideration of a decision or order of an administrative law judge or deputy commissioner shall suspend the running of the time for filing a notice of appeal.

(b) (1) In a case involving a claim filed under the Longshoremen's and Harbor Workers' Compensation Act or its extensions (see § 802.101(b)(1)-(5)), a timely motion for reconsideration for purposes of paragraph (a) of this section is one which is filed not later than 10 days from the date the decision or order was filed in the office of the deputy commissioner.

(2) In a case involving a claim filed under title IV of the Federal Mine Safety and Health Act, as amended (see § 802.101(b)(6)), a timely motion for reconsideration for purposes of paragraph (a) of this section is one which is filed not later than 30 days from the date the decision or order was served on all parties by the administrative law judge and considered filed in the office of the deputy commissioner (see §§ 725.478 and 725.479 (b), (c) of this title).

(c) If a motion for reconsideration is granted, the full time for filing an appeal commences on the date the subsequent decision or order on reconsideration is filed as provided in § 802.205.

(d) If a motion for reconsideration is denied, the full time for filing an appeal commences on the date the order denying reconsideration is filed as provided in § 802.205.

(e) If a timely motion for reconsideration of a decision or order of an administrative law judge or deputy commissioner is filed, any appeal to the Board, whether filed prior to or subsequent to the filing of the timely motion for reconsideration, shall be dismissed as premature. Following final action by the administrative law judge or deputy commissioner pursuant to either paragraph (c) or (d) of this section, a new notice of appeal shall be filed with the Clerk of the Board by any party who wishes to appeal.

§ 802.206 When a notice of appeal is considered to have been filed in the office of the Clerk of the Board.

(a) **Date of receipt.** (1) Except as otherwise provided in this section, a notice of appeal is considered to have been filed only as of the date it is received in the office of the Clerk of the Board.

(2) Notices of appeal submitted to any other agency or subdivision of the Department of Labor or of the U.S. Government or any State government

shall be promptly forwarded to the office of the Clerk of the Board. The notice shall be considered filed with the Clerk of the Board as of the date it was received by the other governmental unit if the Board finds that it is in the interest of justice to do so.

(b) *Date of mailing.* If the notice of appeal is sent by mail and the fixing of the date of delivery as the date of filing would result in a loss or impairment of appeal rights, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the mailing date.

§ 802.207 Contents of notice of appeal.

(a) A notice of appeal shall contain the following information:

(1) The full name and address of the petitioner;

(2) The full name of the injured, disabled, or deceased employee;

(3) The full names and addresses of all other parties, including, among others, beneficiaries, employers, coal mine operators, and insurance carriers where appropriate;

(4) The case file number which appears on the decision or order of the administrative law judge;

(5) The claimant's OWCP file number;

(6) The date of filing the decision or order being appealed;

(7) Whether a motion for reconsideration of the decision or order of the administrative law judge has been filed by any party (see § 802.209); and

(8) The name and address of the attorney or other person, if any, who is representing the petitioner.

(b) Paragraph (a) of this section notwithstanding, any written communication which reasonably permits identification of the decision from which an appeal is sought and the parties affected or aggrieved thereby, shall be sufficient notice for purposes of § 802.205.

(c) In the event that identification of the case is not possible from the information submitted, the Clerk of the Board shall so notify the petitioner and shall give the petitioner a reasonable time to produce sufficient information to permit identification of the case. For purposes of § 802.205, the notice shall be deemed to have been filed as of the date the insufficient information was received.

§ 802.208 Transmittal of record to the Board.

Upon receipt of a copy of the notice of appeal or upon request of the Board, the deputy commissioner or other office having custody of such record shall immediately forward to

the Clerk of the Board the official record of the case, which record includes the transcript or transcripts of all formal proceedings with exhibits, all decisions and orders rendered in the case.

INITIAL PROCESSING

§ 802.209 Acknowledgement of notice of appeal.

Upon receipt by the Board of a notice of appeal, the Clerk of the Board shall as expeditiously as possible notify the petitioner and all other parties and the Solicitor of Labor, in writing, that a notice of appeal has been filed.

§ 802.210 Petition for review.

(a) Within 30 days after the receipt of an acknowledgment of a notice of appeal issued pursuant to § 802.209, the petitioner shall submit a petition for review to the Board and shall serve copies of it, together with accompanying documents, on all parties and the Solicitor of Labor. A petition for review shall contain a statement indicating the specific contentions of the petitioner and describing with particularity the substantial questions of law or fact to be raised by the appeal. Failure to submit a petition for review within the 30-day period described in this section may, in the discretion of the Board, cause the appeal to be deemed abandoned (see § 802.402).

(b) Each petition for review shall be accompanied by supporting brief, memorandum of law, or other statement.

§ 802.211 Response to petition for review.

Within 30 days after the receipt of a petition for review, each party upon whom it was served may submit to the Board a brief, memorandum, or other statement in response to it.

§ 802.212 Reply briefs.

Within 20 days after the receipt of a brief, memorandum, or statement submitted in response to the petition for review pursuant to § 802.211, any party upon whom it was served may file a brief, memorandum, or other statement in reply to it.

§ 802.213 Intervention.

(a) If a person or legal entity shows in a written petition to intervene that his, her, or its rights are affected by any proceeding before the Board, the Board may permit that person or legal entity to intervene in the proceeding and to participate within limits prescribed by the Board.

(b) The petition to intervene shall state precisely (1) the rights affected, and (2) the nature of any argument he, she, or it intends to make.

§ 802.214 Additional briefs.

Additional briefs may be filed or ordered in the discretion of the Board

and shall be submitted within time limits specified by the Board.

§ 802.215 Service and form of papers.

(a) All papers filed with the Board, including notices of appeal, petitions for review, briefs and motions, shall be secured at the top and shall have a caption, title, signature of the party (or his attorney or other representative), date of signature, and certificate of service.

(b) For each paper filed with the Board, the original and three legible copies shall be submitted.

(c) A copy of any paper filed with the Board shall be served on each party and the Solicitor of Labor, by the party submitting the paper.

(d) Any paper required to be given or served to or by the Board or any party shall be served by mail or otherwise presented. All such papers served shall be accompanied by a certificate of service.

§ 802.216 Waiver of time limitations for filing.

(a) The time periods specified for submitting papers described in this part, except that for submitting a notice of appeal, may be enlarged for a reasonable period when in the judgment of the Board an enlargement is warranted.

(b) Any request for an enlargement of time pursuant to this section shall be directed to the Clerk of the Board and must be received by the Clerk on or prior to the date on which the paper is due.

(c) Any request for an enlargement of time pursuant to this section shall be submitted in writing in the form of a motion, shall specify the reasons for the request, and shall specify the date to which an enlargement of time is requested.

(d) Absent exceptional circumstances, no more than one enlargement of time shall be granted to each party.

(e) Absent a timely request for an enlargement of time pursuant to this section and the Board's granting that request, any paper submitted to the Board outside the applicable time period specified in this part shall be accompanied by a separate motion stating the reasons therefore and requesting that the Board accept the paper although filed out of time.

(f) When a paper filed out of time is accepted by the Board, the time for filing a response shall begin to run from the date of a party's receipt of the Board's order disposing of the motion referred to in paragraph (e) of this section.

§ 802.217 Failure to file papers; order to show cause.

(a) Failure to file any paper when due pursuant to this part, may, in the discretion of the Board, constitute a waiver of the right to further participation in the proceedings.

(b) When a petition for review and brief has not been submitted to the Board within the time limitation prescribed by § 802.210, or within an enlarged time limitation granted pursuant to § 802.216, the petitioner shall be ordered to show cause to the Board why his or her appeal should not be dismissed pursuant to § 802.402.

§ 802.218 Motions to the Board.

(a) An application to the Board for an order shall be by motion in writing. A motion shall state with particularity the grounds therefor and shall set forth the relief or order sought.

(b) A motion shall be a separate document and shall not be incorporated in the text of any other paper filed with the Board, except for a statement in support of the motion. If this paragraph is not complied with, the Board will not consider and dispose of the motion.

(c) If there is no objection to a motion in whole or in part by another party to the case, the absence of an objection shall be stated on the motion.

(d) The rules applicable to service and form of papers, § 802.215, shall apply to all motions.

(e) Within 10 days of the receipt of a copy of a motion, a party may file a written response with the Board.

(f) As expeditiously as possible following receipt of a response to a motion or expiration of the response time provided in paragraph (e) of this section, the Board shall issue a dispositive order.

§ 802.219 Party not represented by an attorney: Informal procedure.

If a party to an appeal is not represented by an attorney, the Board may prescribe an informal procedure in such case to be followed by such party.

§ 802.220 Computation of time.

(a) In computing any period of time prescribed or allowed by these rules, by direction of the Board, or by any applicable statute which does not provide otherwise, the day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(b) Whenever a paper is served on the Board or on any party by mail, paragraph (a) of this section will be deemed complied with if the envelope containing the paper is postmarked within the time period allowed, computed as in paragraph (a) of this section. If there is no postmark, or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the mailing date.

(c) A waiver of the time limitations

for filing a paper, other than a notice of appeal, may be requested by proper motion filed in accordance with §§ 802.216 and 802.218.

Subpart C—Procedure for Review

ACTION BY THE BOARD

§ 802.301 Scope of review.

The Benefits Review Board is not empowered to engage in a de novo proceeding or unrestricted review of a case brought before it. The Board is authorized to review the findings of fact and conclusions of law on which the decision or order appealed from was based. Such findings of fact and conclusions of law may be set aside only if they are not, in the judgment of the Board, supported by substantial evidence in the record considered as a whole or in accordance with law.

§ 802.302 Docketing of appeals.

(a) *Maintenance of dockets.* A docket of all proceedings shall be maintained by the Board. Each proceeding shall be assigned a number in chronological order upon the date on which a notice of appeal is received. Correspondence or further applications in connection with any pending case shall refer to the docket number of that case.

(b) *Inspection of docket; publication of decision.* The docket of the Board shall be open to public inspection. The Board shall publish its decisions in a form which is readily available for inspection, and shall allow the public to inspect its decisions at the permanent location of the Board.

ORAL ARGUMENT BEFORE THE BOARD

§ 802.303 Decision; no oral argument.

(a) In the event that no oral argument is ordered pursuant to § 802.306, the Board shall proceed to review the record of the case as expeditiously as possible after all briefs, supporting statement, and other pertinent documents have been received.

(b) Each case shall be considered in the order in which it becomes ready for decision, regardless of docket number, although for good cause shown, upon the filing of a motion to expedite by a party, the Board may advance the order in which a particular case is to be considered.

(c) The Board may advance an appeal on the docket on its own motion if the interests of justice would be served by so doing.

§ 802.304 Purpose of oral argument.

Oral argument may be held by the Board in any case:

(a) When there is a novel issue not previously considered by the Board; or

(b) When in the interests of justice oral argument will serve to assist the Board in carrying out the intent of any of the Acts; or

(c) To resolve conflicting decisions by administrative law judges on a substantial question of law.

§ 802.305 Request for oral argument.

(a) During the pendency of an appeal, but not later than the expiration of 20 days from the date of receipt of the response brief provided by § 802.211, any party may request oral argument. The Board on its own motion may order oral argument at any time.

(b) A request for oral argument shall be submitted in the form of a motion, specifying the issues to be argued and justifying the need for oral argument (see § 802.218).

(c) The party requesting oral argument shall set forth in the motion suggested dates and alternate cities convenient to the parties when and where they would be available for oral argument.

§ 802.306 Action on request for oral argument.

As expeditiously as possible after the date upon which a request for oral argument is received, the Board shall determine whether the request shall be granted or denied.

§ 802.307 Notice of oral argument.

(a) In cases where a request for oral argument has been approved or where oral argument has been ordered, the Board shall give all parties a minimum of 30 days' notice, in writing, by mail, of the scope of argument and of the time when, and place where, oral argument will be held.

(b) Once oral argument has been scheduled by the Board, continuances shall not be granted except for good cause shown by a party, such as in cases of extreme hardship or where attendance of a party or his or her representative is mandated at a previously scheduled judicial proceeding. Unless the ground for the request arises thereafter, requests for continuances must be received by the Board at least 15 days before the scheduled date of oral argument, must be served upon the other parties and must specify good cause why the requesting party cannot be available for oral argument.

(c) The Board may cancel or reschedule oral argument on its own motion at any time.

§ 802.308 Conduct of oral argument.

(a) Oral argument shall be held in Washington, D.C., unless the Board orders otherwise, and shall be conducted at a time reasonably convenient to the parties. For good cause shown, the Chairman or Acting Chairman may, in his or her discretion, postpone an oral argument to a more convenient time.

(b) The proceedings shall be conducted under the supervision of the Chairman or Acting Chairman, who shall regulate all procedural matters arising during the course of the argument.

(c) Within the discretion of the Board, oral argument shall be open to

the public and may be presented by any party, representative, or duly authorized attorney. Presentation of oral argument may be denied by the Board to a party who has not significantly participated in the appeal prior to oral argument.

(d) The Board shall determine the scope of any oral argument presented and shall so inform the parties in its notice scheduling oral argument pursuant to § 802.307.

(e) The Board in its discretion shall determine the amount of time allotted to each party for argument and rebuttal.

§ 802.309 Absence of parties.

The unexcused absence of a party or his or her authorized representative at the time and place set for argument shall not be the occasion for delay of the proceeding. In such event, argument on behalf of other parties may be heard and the case shall be regarded as submitted on the record by the absent party. The Chairman or Acting Chairman may, with the consent of the parties present, cancel the oral argument and treat the appeal as submitted on the written record.

Subpart D—Completion of Board

Review

DISMISSALS

§ 802.401 Dismissal by application of party.

(a) At any time prior to the issuance of a decision by the Board, the petitioner may move that the appeal be dismissed. If granted, such motion for dismissal shall be granted with prejudice to the petitioner.

(b) At any time prior to the issuance of a decision by the Board, any party or representative may move that the appeal be dismissed.

§ 802.402 Dismissal by abandonment.

(a) Upon motion by any party or representative or upon the Board's own motion, an appeal may be dismissed upon its abandonment by the party or parties who filed the appeal. Within the discretion of the Board, a party may be deemed to have abandoned an appeal if neither the party nor his representative participates significantly in the review proceedings.

(b) An appeal may be dismissed on the death of a party only if the record affirmatively shows that there is no person who wishes to continue the action and whose rights may be prejudiced by dismissal.

DECISION OF THE BOARD

§ 802.403 Issuance of decisions; service.

(a) The Board shall issue written decisions as expeditiously as possible after the completion of review proceedings before the Board. The transmittal of the decision of the Board shall indicate the availability of judicial review of the decision under section 21(c) of the LHWCA when appropriate.

(b) The original of the decision shall be filed with the Clerk of the Board. A copy of the Board's decision shall be sent by certified mail or otherwise presented to all parties to the appeal and the Director. The record on appeal, together with a transcript of any oral proceedings, any briefs or other papers filed with the Board, and a copy of the decision shall be returned to the appropriate deputy commissioner for filing.

(c) Proof of service of Board decisions shall be certified by the Clerk of the Board or by another employee in the office of the Clerk of the Board who is authorized to certify proof of service.

§ 802.404 Scope and content of Board decisions.

(a) In its decision the Board shall affirm, modify, or set aside the decision or order appealed from, and may remand the case for action or proceedings consistent with the decision of the Board. The consent of the parties shall not be a prerequisite to a remand ordered by the Board.

(b) In appropriate cases, such as where the issues raised on appeal have been thoroughly discussed and disposed of in prior cases by the Board or the courts, or where the findings of fact and conclusions of law are both correct and adequately discussed, the Board in its discretion may issue a brief, summary decision in writing, disposing of the appeal.

(c) In cases which cannot be disposed of as in paragraph (b) of this section, a full, written decision discussing the issues and applicable law shall be issued.

802.405 Remand.

(a) *By the Board.* Where a case is remanded such additional proceedings shall be initiated and such other action shall be taken as is directed by the Board. Upon completion of all action deemed appropriate, a decision in writing shall be issued by the administrative law judge or deputy commissioner to whom the case was remanded as expeditiously as possible which contains findings of fact and conclusions of law, or when so directed by the Board, the case shall be returned to the Board by the administrative law judge with a recommended decision. A copy of the recommended decision shall be mailed by the Board to each party at his or her last known address. When a recommended decision is issued, each party shall be notified of his or her right to file with the Board within 20 days from the date of mailing of the recommended decision, briefs, or other written statements of exceptions and allegations as to applicable fact and law. Upon request of

any party made within such 20-day period, a reasonable enlargement of time for filing such briefs or statements may be granted and upon a showing of good cause such period may be extended, as appropriate.

(b) *By a court.* Where a case has been remanded by a court, the Board may proceed in accordance with the court's mandate to issue a decision or it may in turn remand the case to an administrative law judge or deputy commissioner with instructions to take such action as is ordered by the court and any additional necessary action and upon completion thereof to return the case with a recommended decision to the Board for its action.

§ 802.406 Finality of Board decisions.

A decision rendered by the Board pursuant to this subpart shall become final 60 days after the issuance of such decision unless a written petition praying that the order be modified or set aside, pursuant to section 21(c) of the LHWCA, is filed in the appropriate U.S. court of appeals prior to the expiration of the 60-day period herein described, or unless a timely request for reconsideration by the Board has been filed as provided in § 802.407.

RECONSIDERATION

§ 802.407 Reconsideration of Board decisions—generally.

(a) Any party in interest may, within 10 days from the filing of a decision pursuant to § 802.403(b), request reconsideration of such decision.

(b) Failure to file a request for reconsideration shall not be deemed a failure to exhaust administrative remedies.

§ 802.408 Notice of request for reconsideration.

(a) In the event that a party requests reconsideration of a decision or order, he or she shall do so in writing, in the form of a motion, stating the supporting rationale for the request, and include any material pertinent to the request.

(b) The request shall be sent by mail, or otherwise presented, to the Clerk of the Board. Copies shall be served on all other parties.

§ 802.409 Grant or denial of request.

All requests for reconsideration shall be reviewed by the Board and shall be granted or denied in the discretion of the Board.

JUDICIAL REVIEW

§ 802.410 Judicial review of Board decisions.

(a) Within 60 days after a decision by the Board has been filed pursuant to § 802.403(b), any party adversely affected or aggrieved by such decision may file a petition for review with the appropriate U.S. court of appeals pursuant to section 21(c) of the LHWCA.

(b) The Director, OWCP, as designee of the Secretary of Labor responsible for the administration and enforcement of the statutes listed in § 802.101, shall be deemed to be the proper party on behalf of the Secretary of Labor in

all review proceedings conducted pursuant to section 21(c) of the LHWCA.

§ 802.411 Certification of record for judicial review.

The record of a case including the

record of proceedings before the Board shall be transmitted to the appropriate court pursuant to the rules of such court.

[FR Doc. 78-25952 Filed 9-18-78; 8:45 am]

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COMPARISON

<u>AK</u>	<u>Idaho</u>	<u>Calif</u>	<u>Oregon</u>	<u>NAB</u>
				

Wcct recommends professional hearing officers

DM: Reward upon completion.

DM: Flight attendant disabled in Gambell crash. Wanted to return to work. Couldn't do it. Obligated to do something. Got together w/ V. Call. Found a job as reservations agent. Problem sitting → special board modified to move around. School for her. Assured job. Long-term disability not resolved.

OREGON - MANDATORY REHIRE

Look @ Christ bill p 28 656622 Sec 2

O'Keefe - Calif paperwork - Monitoring?

Thompson - basic position paper. We are monitoring, coming up w/our own.

SENATE CS FOR CS FOR HOUSE BILL NO. 159 (L&C)

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

SECTION BY SECTION ANALYSIS

- Section 1. This section sets forth the legislative intent of AS 23.30.041 as found in section 3.
- Section 2. This section forgives contributions by the employer or insurance carrier to the second injury fund in those cases in which the total contribution is less than \$20. Contributions of less than \$20 result in administrative costs by the carrier and the Division of Workers' Compensation which offset any positive contribution to the second injury fund.
- Section 3. This section provides for the administration of rehabilitation and establishes fundamental duties and obligations of the parties. Primary responsibility to provide necessary and appropriate rehabilitation services is the employer's. The Board is charged with adopting regulations which will specify those cases when rehabilitation services are warranted. In the event the employer, or carrier, does not voluntarily offer the rehabilitation services, the Rehabilitation Administrator may retain a rehabilitation provider.

The Rehabilitation Administrator is a new partially exempt position and will be selected and employed by the Board. The intent is to create a strong impartial referee to resolve disputes and provide information prior to entering the rehabilitation process. The administrator's decision may be appealed to the Board by requesting a hearing.

Vocational rehabilitation services are limited to 37 weeks, with an additional 37 weeks allowed if special circumstances exist. The intent is to quickly return an injured worker to gainful employment. Most direct return to work programs and on the job training programs can be accomplished in less than the initial 37 weeks. ~~Temporary~~ total or temporary partial disability compensation shall be paid to an injured worker during the rehabilitation process. Additionally, the amendment provides that the employer shall pay all costs of a rehabilitation plan and establishes standards for the award of an additional \$200.00 per month for maintenance.

- Section 4. This section adds language necessary because of the addition of AS 23.30.041 found in section 3.

- Section 5. This section allows placement of disabled workers who are being rehabilitated for gainful employment into work situations where the employer is willing to pay some wages to the trainee but is not willing to accept the risk of new injury to the handicapped person. The statute presently is limited to situations in which the trainee is not being paid at all. This section also permits the Board to place eligible persons in rehabilitation programs with an employer in the event a request is not made through the Division of Vocational Rehabilitation in the Department of Education. The amendment additionally provides that an employer may elect to assume liability under this section instead of the state.
- Section 6. This section deals with the employer's failure to insure and provides authority for the issuance of a stop order if an employer fails to file evidence of insurance or obtain a certificate of self-insurance. It also provides for a civil penalty of \$1,000 a day for failure to comply with a stop order, and the employer may not obtain a public contract with the state or a political subdivision of it for three years following the violation.
- Section 7. This section provides authority for the Board to establish time limits for the submission of medical reports by physicians treating injured workers.
- Section 8. This section deletes language which gives the right to the injured worker to have his physician present, paid for by the employer, at an examination requested by the employer or ordered by the Board.
- Section 9. This section directs the Board to adopt and use a schedule determining the existence and degree of permanent impairment consistent with the American Medical Association's Guide to the Evaluation of Permanent Impairment.
- Section 10. This section specifically provides for the release of medical and rehabilitation information relative to the worker's injury to the parties upon request.
- Section 11. This section removes the "presumption of compensability" contained in AS 23.30.120 if the worker fails to provide notice of the injury to the employer within 30 days of its occurrence.
- Section 12. This section provides realistic time frames in the Board hearing process and rids the statute of Board authorization to rule on a claim without benefit of the parties to be heard.
- Section 13. This section reflects changes necessary because of amendments to AS 23.30.235 found in section 20.
- Section 14. This section clarifies and emphasizes the role of the Board in determining the credibility of witnesses and the weight to be accorded medical testimony and reports. The Board's findings are conclusive, even if the evidence is conflicting or susceptible of contrary conclu-

sions. It is the intent of this section to restore to the Board the decision making power granted by the Legislature when it enacted the Alaska Workers' Compensation Act. Credibility is a difficult area to articulate objective standards. Such factors as demeanor, recollection, bias, and motive are best determined by the fact finding agency and not the reviewing court. Because the Board has a certain amount of expertise, particularly in the area of medicine, it has the ability to assign weight to the testimony or reports of the medical community.

- Section 15. This section allows an employer who has advanced or overpaid compensation to be reimbursed by withholding up to 20 percent out of each unpaid installment or installments of compensation due.
- Section 16. This section changes the method by which the average weekly wage is determined in all jurisdictions for purposes of computing compensation and provides for a consistent and equitable means to adjust compensation rates for claims being paid to out-of-state recipients.
- Section 17. This section clarifies the rules under which compensation rates are adjusted for recipients not residing in Alaska consistent with legislative intent and regulations, insures adequate benefit levels for those recipients and provides for an annual adjustment in the compensation rate commensurate with changes in average weekly wages.
- Section 18. This section authorizes the Commissioner of Labor to determine the average weekly wage in jurisdictions in which no average weekly wage is computed by the Secretary of Labor.
- Section 19. This section clarifies the relationship between workers' compensation and unemployment benefits. Temporary total and permanent total disability compensation are not consistent with the eligibility of an injured worker to receive unemployment benefits, and accordingly, are not payable to an injured worker receiving unemployment benefits. This section does not affect the payment of temporary partial or permanent partial disability compensation to a worker who is receiving unemployment benefits.
- Section 20. This section changes the instances when compensation is not payable to an injured worker. If the injury is proximately caused by the worker's willful intent to injure or kill himself or another, or by intoxication by the injured worker then compensation is not payable. Under the present act an employer must prove the injury was occasioned solely as a result of the worker's intoxication.

The worker is still aided by the presumption contained in AS 23.30.120 found in section 13 which presumes the injury was not proximately caused by the intoxication of the injured worker. The term proximately caused means legally caused, i.e., a substantial factor.

- Section 21. This section provides penalties for persons who willfully make false or misleading statements for the purpose of obtaining or denying workers' compensation benefits.
- Section 22. This section provides for criminal sanctions for the failure to secure the payment of workers' compensation.
- Section 23. See comment to Section 22.
- Section 24. This section provides for new definitions.

"Arising out of and in the course of employment" is limited to exclude activities of a personal nature away from employer provided facilities. The intent is to limit the scope of the "bunkhouse rule" or "remote site doctrine" which has evolved in workers' compensation law.

Specifically excluded from coverage are activities of a personal nature not sanctioned by the employer which occur away from employer provided facilities such as personal hunting trips, travel to and from a job site when employer provided housing at the site is available to the worker, travel to a banking facility when check-cashing facilities are available at the remote site, and similar incidents. Travel to and from a job site provided or required by the employer, recreational activities sanctioned by the employer or activities within the confines of or immediately surrounding the "bunkhouse" or premises, are not excluded from coverage.

"Drugs" are defined to mean a controlled substance as provided by law.

"Suitable gainful employment" provides criteria for determining the need for, and the appropriateness of, rehabilitation or a particular rehabilitation plan.

- Section 25. This amendment permits loss reimbursement plans, i.e., deductibles, as other than a deviation under AS 21.39.070.
- Section 26. This section designates the Rehabilitation Administrator as a partially exempt position.
- Section 27. This section repeals provisions that are unnecessary or inconsistent with proposed legislation.
- Section 28. This section requires the board to publish Section 20 and 21 of this Act as part of a document describing the worker's rights and obligations under the Alaska Workers' Compensation Act.
- Section 29. This section provides that section 3, 20 and 24 of this Act apply only to injuries sustained after the effective date of this Act.
- Section 30. This section provides that the Act takes effect July 1, 1982.

Original sponsor: Rules/Legislative Council

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 159 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. LEGISLATIVE INTENT. It is the intent of the legislature in enacting AS 23.30.041, added in sec. 3 of this Act, that an injured worker receive rehabilitation services that enhance his returning to suitable gainful employment as quickly as possible. In enacting AS 23.30.041, the legislature recognizes the following five rehabilitation goals of a workers' compensation program:

- (1) early identification of injured workers who need rehabilitation;
- (2) use of competent rehabilitation providers;
- (3) opportunities for return to direct employment;
- (4) maintaining an atmosphere conducive to rehabilitation;
- (5) providing incentives and removing disincentives to rehabilitation.

* Sec. 2. AS 23.30.040(b) is amended to read:

(b) If an employee suffers a compensable injury that results in temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability, the employer or insurance carrier shall contribute to the second injury fund. The contribution shall be made by one year from the date of the injury or on termination of the employee's claim, whichever is sooner. If the claim is not terminated within one year, subsequent contributions shall be

made yearly until the termination of the employee's claim. The amount of the contribution is the product of the compensation to which the employee is entitled for temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability [, OR FOR REHABILITATION UNDER AS 23.30.191] and the applicable contribution rate set out in column A of this subsection. Payment need not be made to the second injury fund if the total contribution under this section is less than \$20. By December 15 of each year the commissioner shall determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in column B of this subsection:

Column A		Column B	
Second Injury Fund		Reserve Rate	
Contribution Rate		At Least	But Less Than
(Percent)		(Percent)	(Percent)
6		0	50
5		50	75
4		75	100
3		100	125
2		125	150
1		150	175
0		175	

* Sec. 3. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The board shall select and employ a rehabilitation administrator and may authorize the rehabilitation administrator to select and employ additional rehabilitation staff. The rehabilitation administrator is in the partially exempt service under AS 39.25.120.

(b) The rehabilitation administrator shall implement the provi-

sions of this section, study the issue of rehabilitation, both physical and vocational, on a continuing basis.

(c) If an employee suffers a permanent disability which precludes his return to suitable gainful employment, the employee is entitled to be fully evaluated for participation in a rehabilitation plan within 90 days after the date of injury. A full evaluation shall be performed by a qualified rehabilitation professional. If, in the opinion of the qualified rehabilitation professional, the medical, physical, or emotional state of the employee precludes a full evaluation, the rehabilitation professional shall prepare a preliminary evaluation. A preliminary evaluation shall include the reasons why a full evaluation cannot be made, an opinion as to when the employee will be eligible for a full evaluation, and any information that would be included in a full evaluation which can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation. If the employer does not timely schedule an evaluation under this subsection, the board or a person designated by the board may retain a qualified rehabilitation professional to perform the evaluation. The employer shall pay the reasonable costs of an evaluation under this subsection.

(d) A full evaluation by a qualified rehabilitation professional shall include a determination whether a rehabilitation plan is necessary and shall include the following specific determinations:

(1) whether the rehabilitation plan will enable the employee to return to suitable gainful employment;

(2) whether the employee can return to suitable gainful employment without the rehabilitation plan;

(3) the cost of the rehabilitation plan, including all costs to be incurred by the employer during the rehabilitation plan and an estimate of whether the continuing benefits and compensation due to the

employee under this chapter after the conclusion of the rehabilitation plan will be more or less than the benefits and compensation payable to the employee under this chapter if a rehabilitation plan is not implemented.

(e) A rehabilitation plan may consist of any of the following; however, if the employee can be restored to suitable gainful employment with rehabilitation plans of higher preference, then a rehabilitation plan of a lower preference need not be offered by the employer. The order of preference for rehabilitation plans is

(1) prosthetic devices and training enabling work at the same or similar occupation as at the time of injury;

(2) work site modification and vocational training for the same or similar occupation;

(3) on-the-job training for a new occupation;

(4) vocational training for a new occupation; and

(5) academic training for a new occupation if the educational level is attainable by the employee and employment in the new occupation is believed to be available to the employee in his community at the time academic training is completed.

(f) The employer and employee may agree on a vocational rehabilitation plan. If the employer and employee fail to agree on a vocational rehabilitation plan, any of the parties may submit a plan for approval with the rehabilitation administrator. The rehabilitation administrator shall approve, modify, or deny a plan within 14 days after the plan is submitted. Within 10 days of the rehabilitation administrator's decision any party may seek review of the decision by requesting a hearing in accordance with AS 23.30.110.

(g) Vocational rehabilitation services may not exceed 37 weeks except that vocational rehabilitation services may be extended an additional

tional 37 weeks if the rehabilitation administrator determines that special circumstances exist. This subsection does not prohibit an employer or carrier from providing extended vocational rehabilitation services on a voluntary basis. If rehabilitation requires residence away from the employee's customary residence, reasonable cost of board, lodging, and travel shall be paid by the employer. Temporary disability under AS 23.30.185 or AS 23.30.200 shall be paid throughout the rehabilitation process. The board may award an employee being rehabilitated under this section an additional \$200 a month if it finds that a case of extreme financial hardship exists. The employer shall pay all costs of a rehabilitation plan under this section.

(h) Refusal by an injured employee to participate in an evaluation or a rehabilitation plan approved by the rehabilitation administrator or agreed to by the parties results in forfeiture of disability compensation for the period the refusal continues. However, if an employee begins participation in a rehabilitation plan within two months from the date of refusal, and successfully completes the rehabilitation plan and becomes employed for a period of 30 consecutive business days following the completion of the rehabilitation plan, the employee shall receive lump-sum payment of 25 percent of the compensation forfeited by him. The lump-sum payment is available only once to an employee refusing rehabilitation. The rehabilitation administrator may find that an employee refuses to participate in an evaluation or rehabilitation plan if the employee fails to cooperate with the rehabilitation provider.

(i) For purposes of this section, an employee is restored to suitable gainful employment if he can return to (1) work at the same or similar occupation with the same employer or an employer in the same industry as the employer at the time of injury; (2) an occupation using essentially the same skills as the job at time of injury but in a

different industry; (3) an occupation using different skills but using the employee's academic achievement level at the time of injury; or (4) an occupation requiring an academic achievement level that is different from that attained at the time of injury. An employee shall be returned to suitable gainful employment in the order indicated in (1) - (4) of this subsection.

(j) "Qualified rehabilitation professional" means a person who by education and experience has the skills to make judgments, administer and interpret tests, counsel, and make recommendations concerning the medical, intellectual, emotional, physical, or motivational capacity of a person to accept and perform suitable gainful employment, and to design, implement and supervise programs that tend to enhance a person's medical, intellectual, emotional, physical, or motivational capacity to accept suitable gainful employment.

* Sec. 4. AS 23.30.045(a) is amended to read:

(a) An employer is liable for and shall secure the payment to his employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor unless the subcontractor secures the payment.

* Sec. 5. AS 23.30.045(c) is amended to read:

(c) For a person eligible for vocational rehabilitation service under this chapter or AS 23.15.080 [AND] who is placed with an employer for service [WITHOUT WAGES] at the request of the rehabilitation administrator or division [OFFICE] of vocational rehabilitation to provide [GIVE HIM] on the job training, work readiness, [OR] work therapy experience [,] or work sampling, the liability set out in (a) of this section applies to the state rather than to the employer. However, an

employer may elect to assume the liabilities in (a) of this section.

* Sec. 6. AS 23.30.080 is amended by adding a new subsection to read:

(d) If an employer fails to insure or provide security as required by AS 23.30.075, the board may issue a stop order prohibiting the use of employee labor by the employer until the employer insures or provides security as required by AS 23.30.075. The failure of an employer to file evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption that the employer has failed to insure or provide security as required by AS 23.30.075. If an employer fails to comply with a stop order issued under this section, the board shall assess a civil penalty of \$1,000 per day. The employer may not obtain a public contract with the state or a political subdivision of the state for three years following the violation of the stop order.

* Sec. 7. AS 23.30.095(c) is amended to read:

(c) No claim for medical or surgical treatment is valid and enforceable as against the employer unless, within 20 [TWENTY] days following the first treatment and following the time set by the board for notice of subsequent treatments, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall [MAY], however, excuse the failure to furnish notice within 20 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee.

* Sec. 8. AS 23.30.095(e) is amended to read:

(e) The employee shall, after an injury, at reasonable times during the continuance of his disability if requested by his employer or, when ordered by the board, submit himself to an examination by a

physician or surgeon authorized to practice medicine under the laws of the state in which the employee may be found, furnished and paid for by the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR EXAMINATIONS.] No fact relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination is privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit himself to any examination provided for in this section [HEREIN], his rights to compensation shall be suspended until the obstruction or refusal ceases, and his compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter [HEREUNDER], be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. No autopsy may be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If no adequate notice is given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

* Sec. 9. AS 23.30.095 is amended by adding a new subsection to read:

(j) The board shall adopt and use a schedule for determining the existence and degree of permanent impairment consistent with the American Medical Association Guide to the Evaluation of Permanent Impairment

* Sec. 10. AS 23.30 is amended by adding a new section to article 3 to

read:

Sec. 23.30.097. RELEASE OF INFORMATION. Upon request the employee shall provide written authority to the employer, carrier, rehabilitation provider, or rehabilitation administrator to obtain medical and rehabilitation information relative to the employee's injury.

* Sec. 11. AS 23.30.100(d)(2) is amended to read:

(2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given; however, if delay in giving notice is excused by the board, the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of AS 23.30.120;

* Sec. 12. AS 23.30.110(c) is amended to read:

(c) The board shall make the investigation which it considers necessary with [IN] respect to [OF] the claim, and upon application of an interested party shall provide an opportunity for [ORDER] a hearing on it. If a hearing on a claim is ordered, the board shall give the claimant and other interested parties at least 10 days' notice of the hearing, served personally upon the claimant and other interested parties or sent by registered mail, and shall, within 30 [20] days after the hearing record closes [IS HAD], by order, reject the claim or make an award in respect to it. If a hearing is continued by the board, additional notice under this subsection is not required. If a claim is controverted by the employer and the employee does not request a hearing for a period of two years following the date of controversion, the claim is denied. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

* Sec. 13. AS 23.30.120(3) is amended to read:

(3) the injury was not proximately caused by the intoxication

of the injured employee or proximately caused by the [OCCASIONED SOLELY BY THE INTOXICATION OF THE INJURED] employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician;

- * Sec. 14. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.122. CREDIBILITY OF WITNESSES. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

- * Sec. 15. AS 23.30.155(j) is amended to read:

(j) If an employer has made advance payments or overpayments of compensation, he is entitled to be reimbursed by withholding up to 20 percent out of each [ANY] unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee only on approval of the board.

- * Sec. 16. AS 23.30.175(b) is repealed and reenacted to read:

(b) After June 30 and before December 1 of each year, the commissioner shall adopt and publish the average weekly wage for each jurisdiction for the preceding calendar year as published by the United States Secretary of Labor for the purposes of unemployment insurance. In determining the rate of compensation the commissioner shall use the average weekly wage figure for each jurisdiction, including Alaska, for which the Secretary of Labor computes an average weekly wage. These figures are the applicable average weekly wages for those jurisdiction for the following calendar year.

- * Sec. 17. AS 23.30.175(c) is repealed and reenacted to read:

(c) The following rules apply to recipients who do not reside in Alaska:

(1) The weekly rate of compensation shall be calculated by multiplying the recipient's weekly compensation rate calculated in accordance with AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215 times the ratio of the average weekly wage of the jurisdiction in which the recipient resides to the average weekly wage of Alaska. The ratio is based on the average weekly wages in effect when the recipient leaves Alaska and shall be adjusted annually upon publication of the average weekly wages for all jurisdictions.

(2) The calculation required by this subsection does not apply if the recipient is absent from Alaska for medical or rehabilitation services not reasonably available in Alaska.

(3) If the average weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(2), the calculation required by this subsection applies to only those wages earned in Alaska.

(4) Application of this subsection may not result in a reduction of the weekly compensation rate to less than \$65 a week except as provided in (a) of this section.

* Sec. 18. AS 23.30.175(d) is repealed and reenacted to read:

(d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

* Sec. 19. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.227. EFFECT OF UNEMPLOYMENT BENEFITS. Compensation is not payable to an employee under AS 23.30.180 or 23.30.185 for a week in which the employee receives unemployment benefits.

* Sec. 20. AS 23.30.235 is repealed and reenacted to read:

Sec. 23.30.235. CASES IN WHICH NO COMPENSATION IS PAYABLE. Compensation under this chapter may not be allowed for an injury

(1) proximately caused by the employee's wilful intent to injure or kill himself or another;

(2) proximately caused by intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician.

* Sec. 21. AS 23.30.250 is amended to read:

Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who wilfully makes a false or misleading statement or representation for the purpose of obtaining or denying a benefit or payment under this chapter is guilty of theft by deception as defined in AS-11.46.180 and is punishable as provided in 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

* Sec. 22. AS 23.30.255(a) is amended to read:

(a) An employer required to secure the payment of compensation under this chapter who fails to do so is guilty of a class B felony if the amount involved exceeds \$25,000 or a class C felony if the amount involved is \$25,000 or less [MISDEMEANOR AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the fine or imprisonment imposed [PROVIDED IN THIS SECTION] for the failure of the corporation to secure the payment of compensation. The president, secretary, and treasurer are severally personally liable, jointly with the corporation, for the compensation or other benefit which accrue

under this chapter in respect to an injury which happens to an employee of the corporation while it has failed to secure the payment of compensation as required by AS 23.30.075.

* Sec. 23. AS 23.30.255(b) is amended to read:

(b) An employer who knowingly transfers, sells, encumbers, assigns or in any manner disposes of, conceals, secretes, or destroys any of his property after one of his employees has been injured within the scope of this chapter, with intent to avoid the payment of compensation under this chapter to the employee or his dependents, is guilty of a class B felony if the amount involved exceeds \$25,000 or a class C felony if the amount involved is \$25,000 or less [MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the penalty of imprisonment as well as jointly liable with the corporation for the fine.

* Sec. 24. AS 23.30.265 is amended by adding new paragraphs to read.

(29) "arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes activities of a personal nature away from employer-provided facilities;

(30) "drugs" means a controlled substance as defined by law;

(31) "suitable gainful employment" means employment that is reasonably attainable in light of an individual's age, education, previous occupation, and injury, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to his average weekly wage as determined at the time

of injury.

- * Sec. 25. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.075. REIMBURSEMENT OF LOSSES. An insurer may make a filing for approval by the director that provides for reimbursement by an insured of losses paid by the insurer under a workers' compensation insurance policy. A form that alters the obligation of the insurer to an employee under AS 23.30.025 or 23.30.030 may not be approved by the director. Filing for approval under this section is not a deviation under AS 21.39.070 if the maximum loss reimbursable is \$2,500 or more per occurrence.

- * Sec. 26. AS 39.25.120 is amended by adding a new paragraph to read:

(20) the rehabilitation administrator of the Workers' Compensation Board.

- * Sec. 27. AS 23.30.040(e), 23.30.095(g), 23.30.125(b), 23.30.175(e) and (f), and 23.30.191 are repealed.

- * Sec. 28. The board shall publish AS 23.30.235 and AS 23.30.250 as enacted in secs. 20 and 21 of this Act as part of a document describing the employee's rights and obligations under the Alaska Workers' Compensation Act. The publication shall be mailed or otherwise made available to an injured worker upon notice of an injury.

- * Sec. 29. Sections 3, 20, and 24 of this Act apply only to injuries sustained after the effective date of this Act.

- * Sec. 30. This Act takes effect July 1, 1982.

Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN

DISTRICT 8
CHAIRMAN—LABOR AND COMMERCE COMMITTEE
PHONE 465-3873



3960 REKA DRIVE—D6
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DURING LEGISLATURE
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
PHONE 465-3784

January 5, 1982

To: All concerned about Alaska's Workers Compensation
--an addition to report of December 17, 1981

From: Representative Terry Martin

Ref: More points of view to consider for Alaska's Workers
Compensation legislation--HB 159, 1981

Changes have taken place in our state which now result in a number of claimants drawing excessively large benefit amounts or drawing benefits when they should not be entitled to them at all. An effort should be made to seek alternatives that would eliminate oversized, unearned benefits while still protecting the vast majority of the workforce. Necessary changes should result in compensation large enough for most claimants to survive on during time of recuperation and rehabilitation of injury suffered while on the job, and during period of temporary unemployment, while at the same time not reducing or eliminating the incentive to return to work.

Current policies and lack of regulations or laws result in very large benefit amounts when compared to some individuals' complete work histories. An example of this phenomena is the part-time and seasonal worker. The number of part-time/seasonal workers has grown dramatically in the past years and the projections are that the part-time/seasonal work force will continue to grow faster than the total work force. In Alaska, many seasonal and part-time workers seem to get injured in the closing days of their current jobs. For claimants

with a history of short working periods on an annual basis, a percentage of full-time workers compensation should be considered as to percentage of time worked in the immediate calendar year. The current policy is unfair to workers with full-time, long history of working, and also to employers. A strong duration formula will help to offset the adverse effects of a liberal benefit formula. Furthermore, support of persons only marginally in the labor force should be a welfare function and not a function of worker compensation.

Disqualification. Claimants should be disqualified for willful misconduct connected with work.

Gross misconduct may include acts of dishonesty, violation of safety rules, assault and battery, and destruction of employer's property as assessed by the Workers Compensation Board. The Board may also evaluate a percentage of workers compensation for willful misconduct connected with work. This would include willful acts which do not warrant a disqualification under the gross misconduct provision.

Job Refusal. Claimants may be disqualified by the Workers Compensation Board for refusal of suitable work after release by proper medical authority. Suitable work may be limited to jobs that had approximately the same pay as employment at time of injury.

Vacation Pay. The Workers Compensation Board may consider if vacation pay should postpone the individual from receiving workers compensation benefits for the weeks the vacation pay would cover. Worker compensation is designed to be a wage-lost replacement program, therefore the feeling that the employee is receiving continual wages, so it would not be appropriate to allow the individual to draw both benefits.

Unemployment Compensation. Normally an individual receiving workers compensation for any week would not be able to work, and therefore would not qualify for unemployment compensation. There are situations, however, where the person could be able to work but cannot perform his old job because of the disability. If he is receiving unemployment compensation for any such week, the worker compensation should reduce dollar for dollar any unemployment benefit the individual could otherwise receive.

Eliminate "socialized cost" of workers compensation from employers' premium rates. Rates assigned to employers should be designed to try and recoup from most employers the loss of employees wages and medical cost of injury. In many states, there has been a tendency to recognize that the cost of benefits of certain types should not be charged to individual employers; thus, the legislature should address the question of separating the socialized cost from workers compensation premiums paid by employers, and make the cost--eg, retraining and rehabilitation--the responsibility of proper State agencies. This switch in financing social cost would certainly make State agencies more consciencious of expenditures associated with so-called "retraining programs", when State revenues are used to support their non-controlled advocacies of social benefits, rather than a distant third or fourth party paying the bill, that has virtually no control over social cost of workers compensation. In evaluating the current rate formula in Alaska, the premiums may result in recouping more for socialized costs than what is necessary or fair to the employer. Since 1975, there has been an interplay where there was a large increase in benefit payments which are not recouped ~~fast~~ enough through the normal rate schedule.

The State legislature readily sees other factors that increase the cost of premiums for workers compensation that should be immediately addressed. These changes would reverse the incentives of staying on compensation rather than returning to work as soon as possible. For instance, the compensation formula should not result in an individual drawing more income monthly while on compensation than he or she took home while fully employed. Thus the formula should exclude from wages payments by the employer of the employee's tax for federal old age and survivors insurance, and payments from or to certain special benefits funds by employers. For monthly payments, other income from food stamps, medicaid, medicare, child care, unemployment compensation, and other social services should be not allowed or deducted.

In the state of Alaska, an employer should be subject to certain interest or penalty payments for delay or default in payments of

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contribut s and incur penalties for failure or delinquency in making reports of proper coverage for employees. The Workers Compensation Division or Department of Labor should be allowed authority to immediately close a business until there is proof that employees are covered for injuries received on the job and the premiums are paid up to date. It should be mandatory that insurance carriers notify the Division of Insurance within ten days when an employer has failed to pay premiums or suspended insurance policy.

Original employers, especially self-insured employers who will not for any reason rehire an employee who is re-seeking work, should be somewhat responsible to contribute to the second injury fund covering an ex-employee who is off workers compensation and working for a new employer. Such a policy may encourage reemployment by the original employer or encourage a new employer to hire previously injured or handicapped workers.

RECOMMENDED CHANGES TO HB 159

SECTION 3. (p. 2 1.19)

Change "AS 20.30.041" to "AS 23.30.041"

SECTION 5. (p. 3 1.26)

AS 23.30.041 Rehabilitation Program

Note

(Insert in
place of HB
159 Section
23.30.041(c),
(d),(e),(f),
and (g))

- (c) When an employee suffers a permanent disability which precludes his return to suitable gainful employment, he shall be entitled to be fully evaluated for participation in a rehabilitation program within 90 days after date of injury. The full evaluation shall be performed by a qualified rehabilitation professional. The reasonable costs of the evaluation shall be at the expense of the employer. If in the opinion of the qualified rehabilitation professional, the medical, physical or emotional state of the employee is such that a full evaluation cannot then be made, the rehabilitation professional shall prepare a preliminary evaluation.
- (d) The full evaluation by the qualified rehabilitation professional shall determine if the employee would benefit from a rehabilitation program. The determination shall be based on the following criteria:
- (1) The rehabilitation program will restore the employee to a position to accept suitable, gainful employment equal to or as near as possible to that of his pre-injury employment. An employee is restored to a position of suitable gainful employment if he can return to (in the order of preference)
 - i) work at the same or similar job with the same employer or employer in the same industry as the employer at the time of injury.
 - ii) A job using essentially the same skills as the job at time of injury but in a different industry.
 - iii) A job using different skills but the academic achievement level as attained at the time of injury.
 - iv) A job requiring an academic achievement level which is different from that attained at the time of injury, but which rehabilitation evaluation determines is attainable by the employee and which job is believed to be available to the employee in his community at the time academic training is complete.

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ELY, GUFSS & RUDD
JUNIOR COUNSEL

- (2) The employee cannot be restored to a position to accept suitable gainful employment without the rehabilitation program.
- (3) The cost of the rehabilitation program, including all costs to be incurred by the employer for and during the rehabilitation program, plus an estimate of continuing benefits due to the employee after the conclusion of the rehabilitation program are equal to or less than the benefits due the employee under this Act, assuming no rehabilitation program is implemented and assuming no discounting or lump-sum payment of benefits.
- (4) The rehabilitation program may consist of any of the following, however, if the employee may be restored to a suitable gainful employment with rehabilitation programs of high preference, then a rehabilitation program of a lower preference need not be offered by the employer.

In order of preference rehabilitation programs are:

- i) Prosthetic devices and training enabling work at the same or similar employment as at the time of injury.
 - ii) Work site modification and vocational training to the same or similar occupation.
 - iii) On the job training for a new occupation.
 - iv) Vocational training for a new occupation.
 - v) Academic training for a new occupation.
- (5) A vocational rehabilitation program may not exceed 37 weeks, except that such services may be extended an additional 37 weeks if the rehabilitation administrator determines that special circumstances exist. Nothing in this subsection prohibits an employer or carrier from providing extended vocational rehabilitation services on a voluntary basis. If rehabilitation requires residence away from the employee's customary residence, reasonable cost of board, lodging, and travel shall be paid by the employer. Temporary disability under AS 23.30.185 or AS 23.30.200 shall be paid throughout the rehabilitation process.

- (e) A preliminary evaluation shall include the reasons why a full evaluation cannot be rendered, an opinion as to when the employee will be eligible for a full evaluation, any information which would be included in a full evaluation which can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation.
- (f) If the full evaluation or preliminary evaluation is not timely scheduled for an employee entitled thereto by the employer, the employee or the Board may designate a qualified rehabilitation professional to perform the evaluation, the reasonable costs of which shall be paid by the employer.
- (g) Refusal by an injured employee to participate in an evaluation or a rehabilitation plan offered by the employer results in forfeiture of disability compensation for the period the refusal continues. However, if an employee begins participation in an evaluation or rehabilitation plan within two months from the date of refusal, and successfully completes the evaluation and rehabilitation plan and becomes employed for a period of 30 consecutive business days following the completion of the rehabilitation program, the employee shall receive a lump-sum payment of 25 percent of the compensation forfeited by him. The lump-sum payment is available only once to an employee refusing rehabilitation. The Board may find that an employee refuses to participate in an evaluation or rehabilitation plan if the employee fails to cooperate with the qualified rehabilitation professional.
- (h) The employer responsible for the benefits under this Act shall be liable for, and any subsequent employer hiring the employee during and as part of the rehabilitation program shall not be liable for, benefits under this Act for injuries occurring to the employee while engaged in job training, work readiness, work therapy experience or work sampling which is part of the rehabilitation program offered by the employer and the earnings for which, if any, are credited to gross wages upon which compensation benefits are calculated.
- (e) In this section
 - 1) "Suitable gainful employment" means employment that is reasonably attained in light of an individual's age, education, previous occupation, and injury, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to his average weekly wage as determined at the time of injury.

- ii) "Qualified rehabilitation professional" means a person who by education, professional training and experience has the skills to make judgements, administer and interpret tests, counsel, and make recommendations with respect to a persons medical, intellectual, emotional, physical or motivational capacity to accept and perform suitable gainful employment, and to design, implement and supervise programs which tend to enhance a person's medical, intellectual, emotional, physical or motivational capacity to accept suitable gainful employment.

SECTION 7.

Remove.

SECTION 12.

Remove and adopt a new section to read:

add to Chapter 23.30 a section to read
"AS 23.30.096."

Upon the filing of a claim under this Act, an employee thereby authorizes all providers of medical treatment pertaining to the injury or rendered prior to the date of injury to release information to the employer. If requested by the employer, the employee shall execute all releases to facilitate access to that information.

SECTION 14.

Acceptable except add to subsection (c) the following additional sentence to read:

"If a claim is controverted by the employer and the employee does not request a hearing for a period of two years following the date of controversion, the claim is deemed denied by the Board."

SECTION 15. (p. 8 1.25)

Strike "occasioned solely" and insert in lieu "proximately caused".

SECTION 16. (p. 9 1.3)

Add after ". . . is conclusive" and before "even if . . ." a phrase to read:

" provided there is some evidence of record to support the finding,"

SECTION 17.

Strike and instead add a section to read:

"AS 23.30.155(j) if an employer has made advance payments or overpayments of compensation, he is entitled to be reimbursed out of any unpaid installment or installments of compensation due up to an amount equal to twenty per cent of each of the subsequent installments. If the employer seeks to offset by more than twenty per cent of the amount of each subsequent installment, prior Board approval is required."

SECTION 24.

Add to subsection (12) (p. 13 1.3) a clause to read:

"but no benefit is payable for loss of hearing above 3,000 cycles per second unless hearing above 3,000 cycles per second is a requirement of the job held at the time of injury."

SECTION 31. (p. 18 1.13)

Change "occasioned solely" to "proximately caused"

SECTION 35. (p. 20 1.10)

Add after ". . . of injury" and before ";" a phrase to read:

"up to the amount which when added to all other components of gross earnings brings gross weekly earnings up to the state's average weekly wage"

SECTION 35. (p. 20 1. 19-21)

Should be amended to read:

"and (b) the amount that is or would be deducted or withheld as of January 1, preceding the injury under the Social Security Act of 1935 from the earnings of"

SECTION 39.

Add new section to read:

SEC. 23.30.125 add new subsection

23.30.125(c) An order of determination of the propriety of a rehabilitation program pursuant to AS 23.30.041 issued by the Commissioner or his designated representative acting alone, may be heard before a full panel upon the petition of employee or employer filed within 10 days after issuance of the order.

The Board shall give priority in calendaring its cases for hearing to hearings to determine the propriety of a rehabilitation program pursuant to AS 23.30.041.

SECTION 40.

SEC. 3.30.005(f) is amended to read:

- (f) Two members of a panel constitute a quorum for hearing claims, and the action taken by a quorum of a panel is considered the action of the full Board; the Commissioner or his designated representative acting alone shall constitute a quorum for making determinations of propriety of a rehabilitation program pursuant to AS 23.30.041.

SECTION 41.

This Act shall take effect July 1, 1982, and shall effect only claims occurring on or after the effective date hereof.

**PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT**

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

P. O. BOX 1149
JUNEAU, ALASKA 99811
Ph: 465-2700

April 28, 1981

Ken Spray, Administrative Assistant
House Labor and Commerce Committee
Pouch V
Juneau, AK 99811

Dear Mr. Spray:

Enclosed is our proposed committee substitute for House Bill 94.

Sections 1, 2, 3, 4, 5, 6, 7, and 8 of the proposed committee substitute for House Bill 94 correspond to sections 8, 15, 46, 66, 67, 68, 69 and 70, respectively, of House Bill No. 159.

A section by section analysis of the proposed committee substitute is also enclosed, along with the corresponding fiscal notes.

Jacquelyn McClintock, Director of the Workers' Compensation Division, will attend the April 30 hearing to testify on our proposal.

If you have any questions, please call.

Sincerely,

Judy Knight

Judy Knight
Legislative Liaison

1 PROPOSED COMMITTEE SUBSTITUTE FOR HB 94

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3 *Sec. 1. AS 23.30.005(a) is amended to read:

4 (a) The Alaska Workers' Compensation Board shall consist
5 of nine [SEVEN] members, including a southern panel of three
6 members sitting for the first judicial district, a northern
7 panel of three members sitting for the second and fourth
8 judicial districts, [AND] a southcentral panel of three
9 members sitting for the third judicial district, and one
10 panel of three members which may sit in any judicial district.

11 Each panel shall include the commissioner of labor or his
12 designated representative, a representative of industry and
13 a representative of labor. The latter two members of each
14 panel shall be appointed by the governor. All panel members
15 are subject to confirmation by a majority of the members of
16 the legislature in joint session.

17 *Sec. 2. AS 23.30.040 is repealed and reenacted to read:

18 Sec. 23.30.040. SECOND INJURY FUND. (a) There is
19 created a second injury fund, administered by the commissioner
20 of labor. Money in the second injury fund may only be paid
21 for the benefit of those persons entitled to payment of
22 benefits from the second injury fund under this chapter.
23 Payments from the second injury fund must be made by the
24 commissioner of labor in accordance with the orders and
25 awards of the board.

26 (b) If an employee suffers a compensable injury which
27 results in temporary total disability, temporary partial
28 disability, permanent partial disability, or permanent
29 total disability, the employer or insurance carrier shall
30
31
32

1 contribute to the second injury fund. The first contribution
2 must be made by one year from the date of the injury or on
3 termination of the employee's claim, whichever is sooner.
4 Subsequent contributions must be made yearly or on termina-
5 tion of the employee's claim, whichever is sooner.
6 The amount of the contribution is the product of the compen-
7 sation to which the employee is entitled for temporary
8 total disability, temporary partial disability, permanent
9 partial disability, permanent total disability, or for
10 rehabilitation under AS 23.30.191 and the applicable contri-
11 bution rate set out in Column A of this subsection. By
12 December 15 of each year the commissioner shall determine
13 and make available to the public the applicable contribu-
14 tion rate for the following calendar year according to the
15 reserve rate of the second injury fund in Column B of this
16 subsection:

Column A		Column B	
Second Injury Fund		Reserve Rate	
Contribution Rate	At Least	But Less Than	
(Percent)	(Percent)	(Percent)	
6	0	50	
5	50	75	
4	75	100	
3	100	125	
2	125	150	
1	150	175	
0	175	-	

26 (c) If an employee suffers a compensable injury which
27 results in death and the employee is not survived by a
28 widow, widower, child, or dependent relative eligible to
29 receive death benefits under AS 23.30.215, the employer or
30 insurance carrier shall pay \$10,000 to the second injury
31 fund.

32 (d) The board may refund a payment made into the second
injury fund if the employer or insurance carrier shows that

1 it made the payment by mistake or inadvertence, or if it
2 shows there existed at the time of death of the employee a
3 beneficiary entitled to benefits under AS 23.30.215.

4 (e) The board may direct and provide the vocational
5 retraining and vocational rehabilitation of a permanently
6 disabled person whose condition is a result of an injury
7 compensable under this chapter by making cooperative arrange-
8 ments with insurance carriers, private organizations and
9 institutions, or state or federal agencies. The person
10 being retrained or rehabilitated is entitled to receive
11 additional compensation from the second injury fund for main-
12 tenance during the period of retraining and rehabilitation
13 in the sum which the board considers necessary, not to
14 exceed \$200 a month. The total expenditures for maintenance,
15 retraining, rehabilitation, and necessary transportation may
16 not exceed \$10,000 for one person.

17 (f) All amounts collected as civil penalties under
18 AS 23.30.155(c) shall be paid into the second injury fund.

19 (g) The attorney general may investigate claims and
20 hire expert witnesses necessary to prevent fraudulent or
21 excessive claims for money in the second injury fund.

22 (h) Administration expenses of the state under this
23 section and AS 23.30.205 shall be paid from the general
24 fund.

25 Sec. 3. AS 23.30.155 is amended to read:

26 Sec. 23.30.155. PAYMENT OF COMPENSATION. (a) Compen-
27 sation under this chapter shall be paid periodically, promptly,
28 and directly to the person entitled to it, without an
29 award, except where liability to pay compensation is contro-
30 verted by the employer. To controvert a claim the employer
31 must file a notice, on a form prescribed by the board,
32 stating (1) that the right of the employee to compensation

1 is controverted; (2) the name of the employee; (3) the
2 name of the employer; (4) the date of the alleged injury or
3 death; and (5) the type of compensation and all grounds
4 upon which the right to compensation is controverted.

5 (b) The first installment of compensation becomes due
6 on the 14th day after the employer has knowledge of the injury
7 or death. On this date all compensation then due shall be
8 paid. Subsequent compensation shall be paid in installments,
9 every 14 days [SEMI-MONTHLY], except where the board determines
10 that payment in installments should be made monthly or at
11 some other period.

12 (c) Upon making the first payment, and upon an increase,
13 reduction, termination, suspension, resumption or a change in
14 rate or type of compensation paid [OR PAYMENT FOR ANY CAUSE],
15 the employer shall [IMMEDIATELY] notify the board within 14
16 days, on [IN ACCORDANCE WITH] a form prescribed by the board,
17 that payment of compensation has begun or has been increased,
18 reduced, terminated, resumed, changed, or suspended, as the
19 case may be. If the employer fails to notify the board
20 within 14 days, the board shall assess against the employer
21 a civil penalty of \$100 plus \$25 for each day in excess of
22 14 days that the employer fails to give notice. Total
23 penalties under this section may not exceed \$2,500 for each
24 failure to file a required report.

25 (d) If the employer controverts the right to compensa-
26 tion he shall file with the board on or before the 14th day
27 after he has knowledge of the alleged injury or death or on
28 or before an installment of compensation payable without an
29 award is due, a notice of controversion on [, IN ACCORDANCE
30 WITH] a form prescribed by the board [, STATING THAT THE
31 RIGHT TO COMPENSATION IS CONTROVERTED, THE NAME OF THE
32 CLAIMANT, THE NAME OF THE EMPLOYER, THE DATE OF THE ALLEGED
INJURY OR DEATH, AND THE GROUNDS UPON WHICH THE RIGHT TO
COMPENSATION IS CONTROVERTED].

1 [(g) WITHIN 16 DAYS AFTER FINAL PAYMENT OF COMPENSATION
2 HAS BEEN MADE, THE EMPLOYER SHALL SEND TO THE BOARD A NOTICE
3 IN ACCORDANCE WITH A FORM PRESCRIBED BY THE BOARD STATING
4 THE FACT THAT FINAL PAYMENT HAS BEEN MADE, THE TOTAL AMOUNT
5 OF COMPENSATION PAID, THE NAME OF THE EMPLOYEE AND OF ANY
6 OTHER PERSON TO WHOM COMPENSATION HAS BEEN PAID, THE DATE
7 OF THE INJURY OR DEATH, AND THE DATE TO WHICH COMPENSATION
8 HAS BEEN PAID. IF THE EMPLOYER FAILS TO SO NOTIFY THE
9 BOARD WITHIN THIS TIME, THE BOARD SHALL ASSESS AGAINST THE
10 EMPLOYER A CIVIL PENALTY IN THE AMOUNT OF \$100.]

11 (h) The board may upon its own initiative at any time
12 in a case in which payments are being made with or without
13 an award, [AND SHALL IN A CASE] where right to compensation
14 is controverted, or where payments of compensation have
15 been increased, reduced, terminated, changed, [STOPPED] or
16 suspended, upon receipt of notice from a person entitled to
17 compensation, or from the employer, that the right to compen-
18 sation is controverted, or that payments of compensation
19 have been increased, reduced, terminated, changed, [STOPPED]
20 or suspended, make the investigations, cause the medical
21 examinations to be made, or hold the hearings, and take the
22 further action which it considers will properly protect the
23 rights of all parties.

24 (m) An employer shall file on or before one year from
25 the date of injury or upon termination of the claim, which-
26 ever is sooner, a report on a form prescribed by the board,
27 showing the total amount of all compensation, medical and
28 related benefits, legal fees, and penalties paid during
29 that period including the name of the claimant, the date of
30 injury, and the claim number. Subsequent reports must be
31 made yearly or upon termination of the claim, whichever is
32 sooner.