

CHAPTER 149

LABOR AND INDUSTRY

HOUSE BILL 21-1207

BY REPRESENTATIVE(S) Daugherty and Benavidez, Amabile, Bacon, Burnett, Duran, Esgar, Gray, Herod, Hooton, Michaelson Jenet, Mullica, Ortiz, Ricks, Sirota, Sullivan, Valdez A., Weissman, Woodrow, Young, Exum, McCluskie; also SENATOR(S) Lee and Fields, Danielson, Kolker, Moreno, Story, Garcia.

AN ACT**CONCERNING THE OVERPAYMENT OF WORKERS' COMPENSATION BENEFITS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 8-40-201, **amend** the introductory portion and (15.5) as follows:

8-40-201. Definitions. As used in articles 40 to 47 of this ~~title~~ **TITLE 8**, unless the context otherwise requires:

(15.5) (a) "Overpayment" means money received by a claimant that: ~~exceeds the amount that should have been paid, or which the claimant was not entitled to receive, or which~~

(I) IS THE RESULT OF FRAUD;

(II) IS THE RESULT OF AN ERROR DUE ONLY TO MISCALCULATION, OMISSION, OR CLERICAL ERROR ASSERTED IN A NEW ADMISSION OF LIABILITY FILED WITHIN THIRTY DAYS OF THE ERRONEOUS ADMISSION OF LIABILITY;

(III) IS PAID IN ERROR OR INADVERTENTLY IN EXCESS OF AN ADMISSION OR ORDER THAT EXISTS AT THE TIME THAT THE BENEFITS ARE PAID TO A CLAIMANT; OR

(IV) Results in duplicate benefits because of offsets that reduce disability or death benefits payable under ~~said~~ **articles 40 to 47 of this TITLE 8**. **DUPLICATE BENEFITS INCLUDE ANY WAGES EARNED BY A CLAIMANT IN THE SAME OR OTHER EMPLOYMENT WHILE A CLAIMANT IS ALSO RECEIVING TEMPORARY DISABILITY BENEFITS.**

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) For an overpayment to result, it is not necessary that the overpayment exist at the time the claimant received disability or death benefits under ~~said~~ articles 40 TO 47 OF THIS TITLE 8.

(c) NOTHING IN THIS SUBSECTION (15.5):

(I) PREVENTS AN INSURANCE CARRIER OR AN EMPLOYER FROM RECEIVING A CREDIT AGAINST PERMANENT DISABILITY BENEFITS FOR TEMPORARY DISABILITY BENEFITS PAID BEYOND THE INITIAL DATE OF MAXIMUM MEDICAL IMPROVEMENT ASSIGNED BY AN AUTHORIZED TREATING PHYSICIAN OR THE FINAL DATE OF MAXIMUM MEDICAL IMPROVEMENT ESTABLISHED BY ANY OTHER MEANS, WHICHEVER IS LATER AND TO THE EXTENT THAT PERMANENT DISABILITY BENEFITS REMAIN UNPAID AT THE TIME OF THE FILING OF A FINAL ADMISSION OF LIABILITY; OR

(II) AFFECTS THE POWER OF THE DIRECTOR OR ADMINISTRATIVE LAW JUDGES TO DETERMINE OVERPAYMENTS AND REQUIRE REPAYMENT OF OVERPAYMENTS PURSUANT TO SECTIONS 8-42-113.5 AND 8-43-207 (1)(q).

SECTION 2. In Colorado Revised Statutes, 8-43-303, **amend** (1) as follows:

8-43-303. Reopening. (1) At any time within six years after the date of injury, the director or an administrative law judge may, after notice to all parties, review and reopen any award on the ground of fraud, an overpayment INVOLVING THE CIRCUMSTANCES DESCRIBED IN SECTION 8-42-113.5, an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-43-204 in which the claimant waived all ~~right~~ RIGHTS to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. ~~Upon a prima facie showing that the claimant received overpayments, the award shall be reopened solely as to overpayments and repayment shall be ordered.~~ In cases involving the circumstances described in section 8-42-113.5, recovery of overpayments shall be ordered in accordance with said section. If an award is reopened on grounds of an error, a mistake, or a change in condition, compensation and medical benefits previously ordered may be ended, diminished, maintained, or increased. ~~No such Reopening shall~~ DOES NOT affect the earlier award as to ~~moneys~~ MONEY already paid except in cases of fraud. ~~or overpayment.~~ Any order entered under this subsection (1) ~~shall be~~ IS subject to review in the same manner as other orders.

SECTION 3. Effective date. This act takes effect January 1, 2022.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 17, 2021