

CHAPTER 309

LABOR AND INDUSTRY

SENATE BILL 94-193

BY SENATORS Norton and Traylor;
also REPRESENTATIVES Foster, Reeser, and Schauer.

AN ACT

CONCERNING THE PROCEDURES RELATED TO THE RESOLUTION OF DISPUTES IN THE WORKERS' COMPENSATION SYSTEM.

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

SECTION 1. 8-43-103 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-103. Notice of injury - time limit. (2) The director AND ADMINISTRATIVE LAW JUDGES EMPLOYED BY THE DIVISION OF ADMINISTRATIVE HEARINGS shall have jurisdiction at all times to hear and determine and make findings and awards on all cases of injury for which compensation or benefits are provided by articles 40 to 47 of this title. Except in cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, and anthracosis, the right to compensation and benefits provided by said articles shall be barred unless, within two years after the injury or after death resulting therefrom, a notice claiming compensation is filed with the division. This limitation shall not apply to any claimant to whom compensation has been paid or if it is established to the satisfaction of the director within three years after the injury or death that a reasonable excuse exists for the failure to file such notice claiming compensation and if the employer's rights have not been prejudiced thereby, and the furnishing of medical, surgical, or hospital treatment by the employer shall not be considered payment of compensation or benefits within the meaning of this section; but, in all cases in which the employer has been given notice of an injury and fails, neglects, or refuses to report said injury to the division as required by the provisions of said articles, this statute of limitations shall not begin to run against the claim of the injured employee or said employee's dependents in the event of death

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

until the required report has been filed with the division.

SECTION 2. 8-43-202, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-202. Director may refer taking of evidence in cases to appropriate officials of other states. ~~The director may refer any case to any district or county judge or other person in this state as special administrative law judge for the purpose of taking evidence, and such special administrative law judge, after notice to the parties in interest, may hold hearings and issue subpoenas for such purpose and, in case such hearing is held by such special administrative law judge, shall reduce all evidence so taken to writing and certify to and return the same to the director, and such evidence may be used by the director or any administrative law judge of the division in making or entering the findings and award of the director.~~ The director, after notice to the parties in interest, may refer the taking of any evidence to any commission, court, or board administering in another state the compensation laws thereof, and such commission, court, or board of such other state, after notifying the parties in interest of the time and place of holding such hearing, shall hold hearings and take such evidence in the same manner and by the officers as authorized by the laws of such state, and all such proceedings shall be certified and return thereof made as prescribed by the director.

SECTION 3. 8-43-205 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-205. Mediation. (1) ~~Any person PARTY involved in a dispute as to a claimant's average weekly wage, as to a change in a claimant's health care provider, or as to the authorized medical benefits in any case CLAIM arising under articles 40 to 47 of this title shall~~ MAY request mediation services by filing a request for mediation services with the division. ~~before an application for a hearing may be filed. Nothing in this section precludes parties from voluntarily mediating any dispute in any case.~~ HOWEVER, MEDIATION SHALL BE ENTIRELY VOLUNTARY AND SHALL NOT BE CONDUCTED WITHOUT THE CONSENT OF ALL PARTIES TO THE CLAIM. IF A REQUEST FOR MEDIATION SERVICES IS MADE AFTER AN APPLICATION FOR A HEARING HAS BEEN FILED, THE ADMINISTRATIVE LAW JUDGE HEARING THE DISPUTE SHALL APPROVE, ON MOTION OF THE PARTIES, THE SUBMISSION OF THE DISPUTE TO MEDIATION PRIOR TO HEARING THE MATTER. An application for mediation services shall be filed on a form prescribed by the director. ~~and any party may file a response thereto within twenty days.~~ Upon receiving a response to the application for mediation services, the director shall cause a mediation conference to occur within thirty days thereafter. ~~If the mediation is unable to resolve all the contested issues scheduled for mediation, the mediator shall so note, and any party to the mediation may then file an application for a hearing.~~ At a mediation conference, the claimant may be represented by ~~himself~~ THE CLAIMANT, counsel, or any other agent of the claimant's choice. Mediators need not be attorneys. ~~Upon the filing of an application for a hearing by any party, the division shall transfer all relevant documents and case files to the division of administrative hearings. The director has authority to require any party to the claim to attend mediation conferences. Any party willfully refusing to attend or participate in a mediation conference shall be subject to the penalty provisions set forth in section 8-43-304, to the denial or vacation of a hearing date, and to the assessment of reasonable attorney fees and costs of the opposing party.~~

SECTION 4. 8-43-206 (1) and (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 8-43-206 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

8-43-206. Settlement conference procedures. (1) Any employee, insurer, or employer, if self-insured, involved in a dispute arising under articles 40 to 47 of this title may request settlement conference services from the DIRECTOR OR THE division of administrative hearings in the department of administration. However, such settlement procedures are optional and entirely voluntary, and no such procedures shall be conducted without the consent of both parties to the dispute.

(2) Settlement conferences shall be conducted by a settlement conference officer who ~~shall~~ MAY be A PREHEARING ADMINISTRATIVE LAW JUDGE OR an administrative law judge in the division of administrative hearings in the department of administration appointed pursuant to section 24-30-1003, C.R.S., and assigned to hear disputes arising under articles 40 to 47 of this title. The parties may agree on the selection of a settlement conference officer; except that such officer shall not be the administrative law judge who is regularly assigned to hear the employee's case. If the parties fail to agree on the selection of such officer, they may apply to the DIRECTOR OR TO THE division of administrative hearings ~~which shall designate~~ FOR THE DESIGNATION OF a settlement conference officer who shall not be the administrative law judge who is regularly assigned to hear the employee's case.

(5) THE DIRECTOR OF THE DIVISION OF WORKERS' COMPENSATION SHALL ADOPT RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION. SUCH RULES AND REGULATIONS SHALL BE CONSISTENT WITH THE PROVISIONS OF SECTION 8-43-204.

SECTION 5. 8-43-206.5, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-206.5. Right to binding arbitration for resolution of disputes under articles 40 to 47. At any time ~~after the mediation conference pursuant to section 8-43-205,~~ but prior to a hearing, the parties may agree to submit any dispute under articles 40 to 47 of this title to binding arbitration. Said arbitration shall be by an administrative law judge of the parties' choice or pursuant to arbitration procedures as provided by the Colorado rules of civil procedure. Any arbitration award pursuant to the provisions of this section shall be binding upon the parties, and no other procedure contained in this article shall be available to the parties for the further review of such award.

SECTION 6. Part 2 of article 43 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

8-43-207.5. Prehearing conferences. (1) NOTWITHSTANDING ANY PROVISION OF ARTICLES 40 TO 47 OF THIS TITLE TO THE CONTRARY, AT ANY TIME NOT LESS THAN TEN DAYS PRIOR TO THE FORMAL ADJUDICATION ON THE RECORD OF ANY ISSUE BEFORE THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE IN THE DIVISION OF ADMINISTRATIVE HEARINGS, ANY PARTY TO A CLAIM MAY REQUEST A PREHEARING CONFERENCE BEFORE A PREHEARING ADMINISTRATIVE LAW JUDGE IN THE DIVISION OF WORKERS' COMPENSATION FOR THE SPEEDY RESOLUTION OF OR SIMPLIFICATION OF

ANY ISSUES AND TO DETERMINE THE GENERAL READINESS OF REMAINING ISSUES FOR FORMAL ADJUDICATION ON THE RECORD. THE ISSUES ADDRESSED IN SUCH PREHEARING CONFERENCE SHALL BE LIMITED TO: RIPENESS OF LEGAL, BUT NOT FACTUAL, ISSUES FOR FORMAL ADJUDICATION ON THE RECORD BEFORE THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE IN THE DIVISION OF ADMINISTRATIVE HEARINGS; DISCOVERY MATTERS; AND EVIDENTIARY DISPUTES. THE FILING OF AN APPLICATION FOR HEARING WITH THE DIVISION OF ADMINISTRATIVE HEARINGS SHALL NOT BE A PREREQUISITE TO A REQUEST FOR A PREHEARING CONFERENCE UNDER THIS SECTION. THE DIRECTOR AND THE ADMINISTRATIVE LAW JUDGES IN THE DIVISION OF ADMINISTRATIVE HEARINGS MAY ALSO REQUEST A PREHEARING CONFERENCE UNDER THIS SECTION.

(2) "PREHEARING ADMINISTRATIVE LAW JUDGE" MEANS A QUALIFIED PERSON APPOINTED BY THE DIRECTOR PURSUANT TO SECTION 8-47-101 TO PRESIDE OVER PREHEARING CONFERENCES PURSUANT TO THIS SECTION, TO APPROVE SETTLEMENTS PURSUANT TO SECTION 8-43-204, TO CONDUCT SETTLEMENT CONFERENCES PURSUANT TO SECTION 8-43-206, AND TO CONDUCT ARBITRATIONS PURSUANT TO SECTION 8-43-206.5. SUCH PREHEARING ADMINISTRATIVE LAW JUDGES SHALL HAVE AUTHORITY TO: ORDER ANY PARTY TO PARTICIPATE IN A PREHEARING CONFERENCE; ISSUE INTERLOCUTORY ORDERS; ISSUE SUBPOENAS IN THE NAME OF THE DIVISION FOR PRODUCTION OF DOCUMENTARY EVIDENCE WHICH SHALL BE SERVED IN THE SAME MANNER AS SUBPOENAS IN THE DISTRICT COURT; MAKE EVIDENTIARY RULINGS; PERMIT PARTIES TO CAUSE DEPOSITIONS TO BE TAKEN; DETERMINE THE COMPETENCY OF ANY PARTY TO A CLAIM TO ENTER INTO A SETTLEMENT AGREEMENT; AND STRIKE THE APPLICATION FOR HEARING OF A PARTY FOR FAILURE TO COMPLY WITH ANY PROVISION OF THIS SECTION.

(3) AN ORDER ENTERED BY A PREHEARING ADMINISTRATIVE LAW JUDGE SHALL BE AN ORDER OF THE DIRECTOR AND BINDING ON THE PARTIES. SUCH AN ORDER SHALL BE INTERLOCUTORY. PREHEARING CONFERENCES NEED NOT BE HELD ON THE RECORD; HOWEVER, ANY PARTY TO A CLAIM MAY REQUEST IN ADVANCE THAT A RECORD BE MADE OF THE PREHEARING CONFERENCE, EITHER TAKEN VERBATIM BY A COURT REPORTER PROVIDED AND PAID FOR BY THE REQUESTING PARTY OR ELECTRONICALLY RECORDED BY THE DIVISION.

(4) THE DIRECTOR SHALL ADOPT RULES AND REGULATIONS AS MAY BE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

SECTION 7. 8-43-208, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-208. Investigations. (1) For the purpose of making any investigation ~~or conducting any hearing~~ with regard to any matter contemplated by the provisions of articles 40 to 47 of this title, the director shall have power to appoint, with the approval of the executive director by an order in writing, any competent person as an agent, ~~or referee~~, whose duties shall be prescribed in such order. ~~Any referee conducting a hearing under this article shall be appointed in the same manner as an administrative law judge is appointed pursuant to part 10 of article 30 of title 24, C.R.S.~~

(2) ~~In the discharge of any such duties, such agent or referee shall have every~~

~~power whatsoever for obtaining information granted in said articles to the director, and all powers granted by law to officers authorized to take depositions are hereby granted to such agent.~~

(3) The director may conduct any number of such investigations contemporaneously through different agents. ~~or referees and may delegate to such agents the subpoenaing and swearing of witnesses and the taking of all testimony bearing upon any investigation or hearing. The decision of the director shall be based upon the director's examination of all testimony and records. The recommendations made by such agents or referees shall not preclude any further investigations or the taking of further testimony if the director so orders.~~

SECTION 8. 8-43-209, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-209. Time schedule for hearings - establishment. The director OF THE DIVISION OF ADMINISTRATIVE HEARINGS shall establish ~~by rule and regulation~~ a time schedule for hearings by administrative law judges ~~Such time schedule shall establish that~~ WITHIN THE TIME LIMITS FOR SUCH HEARINGS AS ESTABLISHED IN THIS SECTION. Hearings shall be heard within eighty to one hundred days of the occurrences listed in section 8-43-211 (2). One extension of time of no more than sixty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown, in the following cases: When pulmonary lung disease, cancer, cardiovascular disease, or stroke is alleged as the cause of the disability; when the subsequent injury fund is a party; when permanent total disability is alleged; or when compensability of the injury is contested. In all other cases, extensions of time of no more than twenty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown. Such extensions may be granted only when the interests of all parties will be served.

SECTION 9. 8-43-215, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-215. Orders. Any hearing conducted under this article shall be completed within one hundred twenty days, or in the case where an extension of time of sixty days is allowable under the provisions of section 8-43-209, one hundred sixty days, after a request therefor pursuant to section 8-43-211 (2). At the conclusion of a hearing, the administrative law judge OR DIRECTOR shall make a summary order allowing or denying said claim without being required to make specific findings of fact. If compensation benefits are granted, it shall be sufficient to specify the amounts thereof, the disability for which compensation benefits are granted, by whom and to whom such benefits shall be paid, and the method and time of such payments. Within fifteen working days after the conclusion of such hearing, the administrative law judge OR DIRECTOR shall reduce such order to writing; a certificate of mailing and a copy of such order shall be mailed to each of the parties in interest, the original of which shall be a part of the records in said case. Said order shall be entered as the final award of the ADMINISTRATIVE LAW JUDGE OR director subject to review as provided in this article. Any party dissatisfied with a summary order may request specific findings of fact and conclusions of law in writing within fifteen days after the date of the certificate of mailing of the summary order. Such request shall be a prerequisite to a petition to review under section 8-43-301, and such request shall

stay the time within which to file a petition to review until after the mailing of the specific findings and conclusions. Thereafter, time limits shall be governed by section 8-43-301. Specific findings of fact and conclusions of law requested pursuant to this section shall be completed within twenty-five days after such request.

SECTION 10. 8-43-301 (14), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-301. Petitions to review. (14) The signature of an attorney on a petition to review or brief in support thereof constitutes a certificate by the attorney that such attorney has read the petition or brief; that, to the best of the attorney's knowledge, information, or belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, cause delay, or unnecessarily increase the cost of litigation. If a petition or brief is signed in violation of this subsection (14), the director, THE ADMINISTRATIVE LAW JUDGE, or the panel shall award reasonable attorney fees and costs to the party incurring the fees and costs as a result of the improper actions.

SECTION 11. 8-43-304, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

8-43-304. Violations - penalty - offset for benefits obtained through fraud.

(3) THE DIRECTOR AND EACH ADMINISTRATIVE LAW JUDGE SHALL REPORT TO THE DIVISION EACH TIME A PENALTY IS IMPOSED PURSUANT TO THIS SECTION. EACH SUCH REPORT SHALL INCLUDE THE AMOUNT OF THE PENALTY, THE NAME OF THE ADMINISTRATIVE LAW JUDGE AWARDED THE PENALTY, IF APPLICABLE, AND THE NAME OF THE OFFENDING PARTY. THE DIRECTOR SHALL REPORT TO THE GENERAL ASSEMBLY ON JANUARY 1 OF EACH YEAR ON THE INFORMATION OBTAINED FROM REPORTS FILED PURSUANT TO THIS SUBSECTION (3).

(4) IN ANY APPLICATION FOR HEARING FOR ANY PENALTY PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE APPLICANT SHALL STATE WITH SPECIFICITY THE GROUNDS ON WHICH THE PENALTY IS BEING ASSERTED. AFTER THE DATE OF MAILING OF SUCH AN APPLICATION, AN ALLEGED VIOLATOR SHALL HAVE TWENTY DAYS TO CURE THE VIOLATION. IF THE VIOLATOR CURES THE VIOLATION WITHIN SUCH TWENTY-DAY PERIOD, AND THE PARTY SEEKING SUCH PENALTY FAILS TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE ALLEGED VIOLATOR KNEW OR REASONABLY SHOULD HAVE KNOWN SUCH PERSON WAS IN VIOLATION, NO PENALTY SHALL BE ASSESSED. THE CURING OF THE VIOLATION WITHIN THE TWENTY-DAY PERIOD SHALL NOT ESTABLISH THAT THE VIOLATOR KNEW OR SHOULD HAVE KNOWN THAT SUCH PERSON WAS IN VIOLATION.

(5) A REQUEST FOR PENALTIES SHALL BE FILED WITH THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE WITHIN ONE YEAR AFTER THE DATE THAT THE REQUESTING PARTY FIRST KNEW OR REASONABLY SHOULD HAVE KNOWN THE FACTS GIVING RISE TO A POSSIBLE PENALTY.

SECTION 12. 8-43-305, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-305. Each day separate offense. Every day during which any employer or insurer, or officer or agent of either, or any employee, or any other person fails to comply with any lawful order of AN ADMINISTRATIVE LAW JUDGE, the director, or THE panel or fails to perform any duty imposed by articles 40 to 47 of this title shall constitute a separate and distinct violation thereof. In any action brought to enforce the same or to enforce any penalty provided for in said articles, such violation shall be considered cumulative and may be joined in such action.

SECTION 13. 8-43-313, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-313. Summary review by supreme court. Any affected party dissatisfied with the decision of the court of appeals may seek review by writ of certiorari in the supreme court. If the supreme court reviews the judgment of the court of appeals, such review shall be limited to a summary review of questions of law. Any such action shall be advanced upon the calendar of the supreme court, and a final decision shall be rendered within sixty days after the date the supreme court grants further appellate review. The director, AN ADMINISTRATIVE LAW JUDGE, the industrial claim appeals office, or any other aggrieved party shall not be required to file any undertaking or other security upon review by the supreme court.

SECTION 14. 8-43-401 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-401. Attorney general, district attorney, or attorney of division to act for director or office - penalties for failure of insurer to pay benefits. (1) Upon the request of the director or the industrial claim appeals office, the attorney general or the district attorney of any district or any attorney-at-law in the regular employ of the division shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of articles 40 to 47 of this title, or any award or order of the director, AN ADMINISTRATIVE LAW JUDGE, or the industrial claim appeals office, or for the recovery of any money due the Colorado compensation insurance authority fund, or any penalty provided in said articles, and shall defend in like manner all suits, actions, or proceedings brought against the director, AN ADMINISTRATIVE LAW JUDGE, or the industrial claim appeals office.

SECTION 15. 8-43-405, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-405. Payment as discharge of liability - conflicting claims. Payment of death benefits to one or more dependents shall protect and discharge to that extent all compensation under articles 40 to 47 of this title unless and until any other person claiming to be a dependent has given the division notice of said person's claim and until the division has notified the employer or the employer's insurance carrier of such claim. In such case, the director OR AN ADMINISTRATIVE LAW JUDGE shall determine the respective rights of said rival claimants, and thereafter such death benefits shall be paid to such dependents as the director OR THE ADMINISTRATIVE LAW JUDGE may find so entitled under the provisions of said articles.

SECTION 16. 8-43-410 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-43-410. Right to compensation operates as lien - interest on award.

(2) Every employer or insurance carrier of an employer shall pay interest at the rate of eight percent per annum upon all sums not paid upon the date fixed by the award of the director OR ADMINISTRATIVE LAW JUDGE for the payment thereof or the date the employer or insurance carrier became aware of an injury, whichever date is later. Upon application and satisfactory showing to the director OR ADMINISTRATIVE LAW JUDGE of the valid reasons therefor, said director OR ADMINISTRATIVE LAW JUDGE, upon such terms or conditions as the director OR ADMINISTRATIVE LAW JUDGE may determine, may relieve such employer or insurer from the payment of interest after the date of the order therefor; and proof that payment of the amount fixed has been offered or tendered to the person designated by the award shall be such sufficient valid reason.

SECTION 17. 8-47-107, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-47-107. Adoption of rules and regulations. The director has the power to adopt reasonable and proper rules and regulations relative to the administration of articles 40 to 47 of this title and proper rules and regulations to govern proceedings and hearings of the division, and the director has the discretion to amend said rules and regulations from time to time. NO SUCH RULE SHALL LIMIT THE JURISDICTION OF AN ADMINISTRATIVE LAW JUDGE IN THE DIVISION OF ADMINISTRATIVE HEARINGS TO HEAR AND DECIDE ALL MATTERS ARISING UNDER ARTICLES 40 TO 47 OF THIS TITLE. Such rules and regulations shall be promulgated in accordance with section 24-4-103, C.R.S.

SECTION 18. 8-47-203, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-47-203. Access to files, records, and orders. (2) ALL ORDERS ENTERED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE SHALL BE MADE AVAILABLE BY THE DIVISION FOR INSPECTION OR COPYING FOR A FEE REFLECTING ACTUAL COSTS; EXCEPT THAT THE NAME AND OTHER IDENTIFYING INFORMATION CONCERNING THE CLAIMANT AND EMPLOYER SHALL BE EXCISED.

SECTION 19. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 1994