

CHAPTER 313

LABOR AND INDUSTRY

HOUSE BILL 98-1062

BY REPRESENTATIVES Paschall, Arrington, Musgrave, Piffner, and Young;
also SENATORS Arnold and Tebedo.

AN ACT

CONCERNING PROCEDURAL REQUIREMENTS FOR THE SELECTION OF AN INDEPENDENT MEDICAL EXAMINER IN CASES OF DISPUTES UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO".

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

SECTION 1. Article 42 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

8-42-107.2. Selection of independent medical examiner - procedure - time.

(1) THIS SECTION GOVERNS THE SELECTION OF AN INDEPENDENT MEDICAL EXAMINER, ALSO REFERRED TO IN THIS SECTION AS AN "IME", TO RESOLVE DISPUTES ARISING UNDER SECTION 8-42-107.

(2) (a) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), THE TIME FOR SELECTION OF AN IME COMMENCES AS FOLLOWS, DEPENDING ON WHICH PARTY INITIATES THE DISPUTE:

(A) FOR THE CLAIMANT, THE TIME FOR SELECTION OF AN IME COMMENCES WITH THE DATE OF MAILING OF A FINAL ADMISSION OF LIABILITY BY THE INSURER OR SELF-INSURED EMPLOYER THAT INCLUDES AN IMPAIRMENT RATING ISSUED IN ACCORDANCE WITH SECTION 8-42-107.

(B) FOR THE INSURER OR SELF-INSURED EMPLOYER, THE TIME FOR SELECTION OF AN IME COMMENCES WITH THE DATE ON WHICH THE DISPUTED FINDING OR DETERMINATION IS MAILED OR PHYSICALLY DELIVERED TO THE INSURER OR SELF-INSURED EMPLOYER.

(II) IF, AS OF THE DATE ON WHICH THE TIME FOR SELECTION OF AN IME WOULD

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

OTHERWISE COMMENCE, A MEDICAL CONDITION IS NOT YET RATABLE BECAUSE OF A PROVISION IN THE MEDICAL TREATMENT GUIDELINES OR IN THE REVISED THIRD EDITION OF THE "AMERICAN MEDICAL ASSOCIATION GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT", THE TIME FOR SELECTION OF AN IME SHALL COMMENCE ON THE DATE ON WHICH AN IMPAIRMENT RATING IS MAILED OR PHYSICALLY DELIVERED.

(b) IF ANY PARTY DISPUTES A FINDING OR DETERMINATION OF THE AUTHORIZED TREATING PHYSICIAN, SUCH PARTY SHALL REQUEST THE SELECTION OF AN IME. THE REQUESTING PARTY SHALL NOTIFY ALL OTHER PARTIES IN WRITING OF THE REQUEST, ON A FORM PRESCRIBED BY THE DIVISION BY RULE, AND SHALL PROPOSE ONE OR MORE ACCEPTABLE CANDIDATES FOR THE PURPOSE OF ENTERING INTO NEGOTIATIONS FOR THE SELECTION OF AN IME. SUCH NOTICE AND PROPOSAL IS EFFECTIVE UPON MAILING VIA UNITED STATES MAIL, FIRST-CLASS POSTAGE PAID, ADDRESSED TO THE DIVISION AND TO THE LAST-KNOWN ADDRESS OF EACH OF THE OTHER PARTIES. UNLESS SUCH NOTICE AND PROPOSAL ARE GIVEN WITHIN THIRTY DAYS AFTER THE DATE OF MAILING OF THE FINAL ADMISSION OF LIABILITY OR THE DATE OF MAILING OR DELIVERY OF THE DISPUTED FINDING OR DETERMINATION, AS APPLICABLE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THE AUTHORIZED TREATING PHYSICIAN'S FINDINGS AND DETERMINATIONS SHALL BE BINDING ON ALL PARTIES AND ON THE DIVISION.

(c) IF THE INSURER OR SELF-INSURED EMPLOYER REQUESTS AN IME AND THE EXAMINATION IS CONDUCTED BEFORE THE INSURER OR SELF-INSURED EMPLOYER ADMITS LIABILITY PURSUANT TO SECTION 8-43-203 (2) (b), THE CLAIMANT MAY NOT REQUEST A SECOND INDEPENDENT MEDICAL EXAMINATION ON THAT ISSUE BUT MAY APPEAL THE IME'S DECISION, AS SET FORTH IN SECTION 8-43-203 (2) (b) (II).

(3) UPON RECEIVING THE REQUESTING PARTY'S NOTICE AND PROPOSAL PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE OTHER PARTIES HAVE UNTIL THE END OF THE THIRTIETH DAY AFTER THE DATE OF MAILING OF SUCH NOTICE AND PROPOSAL WITHIN WHICH TO NEGOTIATE THE SELECTION OF AN IME. IF THE PARTIES AGREE ON AN IME ON OR BEFORE SUCH THIRTIETH DAY, THE REQUESTING PARTY SHALL PROMPTLY NOTIFY THE IME IN WRITING THAT HE OR SHE HAS BEEN SELECTED. IF, WITHIN SUCH TIME, THE PARTIES ARE UNABLE TO AGREE OR THE REQUESTING PARTY RECEIVES NO RESPONSE TO THE NOTICE AND PROPOSAL, THE INSURER OR SELF-INSURED EMPLOYER SHALL GIVE WRITTEN NOTICE OF SUCH FACT TO THE DIVISION WITHIN THIRTY DAYS VIA UNITED STATES MAIL, FIRST-CLASS POSTAGE PAID. THE DIVISION SHALL THEN, WITHIN TEN DAYS AFTER RECEIVING SUCH WRITTEN NOTICE, SELECT AN IME FROM A LIST OF IMES MAINTAINED BY THE DIVISION. THE DIVISION SHALL ADMINISTER THE LIST IN SUCH FASHION AS TO ENSURE THAT THE NAMES OF CANDIDATES TO SERVE AS IME IN EACH PENDING CASE REMAIN CONFIDENTIAL UNTIL THE IME IS SELECTED AND THAT SELECTIONS ARE ROTATED OR OTHERWISE DISTRIBUTED UNIFORMLY AND RANDOMLY AMONG THE POOL OF CANDIDATES.

(4) WITHIN THIRTY DAYS AFTER THE DATE OF THE MAILING OF THE IME'S REPORT, THE INSURER OR SELF-INSURED EMPLOYER SHALL EITHER FILE ITS ADMISSION OF LIABILITY PURSUANT TO SECTION 8-43-203 OR REQUEST A HEARING BEFORE THE DIVISION CONTESTING ONE OR MORE OF THE IME'S FINDINGS OR DETERMINATIONS CONTAINED IN SUCH REPORT.

(5) THE REQUESTING PARTY SHALL ADVANCE THE FULL COST OF THE INDEPENDENT

MEDICAL EXAMINATION TO THE IME AT LEAST TEN DAYS BEFORE THE APPOINTED TIME FOR THE EXAMINATION.

SECTION 2. The introductory portion to 8-42-107 (8) (b) (II) and 8-42-107 (8) (b) (III), (8) (b.5) (I) (D), (8) (b.5) (II), and (8) (c), Colorado Revised Statutes, are amended to read:

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (8) Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries. (b) (II) If at any time either party disputes a determination by an authorized treating physician on the question of whether the injured worker has or has not reached maximum medical improvement, ~~the parties may select an independent medical examiner by mutual agreement. The finding of such independent medical examiner shall be binding on the parties and on the division. If the parties are unable to mutually agree on the selection of an independent medical examiner, the division shall select an independent medical examiner from a list of independent medical examiners maintained by the division~~ MAY BE SELECTED IN ACCORDANCE WITH SECTION 8-42-107.2; except that, if an authorized treating physician has not determined that the employee has reached maximum medical improvement, the employer or insurer may only request the ~~division to select~~ SELECTION OF an independent medical examiner if all of the following conditions are met:

(III) The finding of an independent medical examiner ~~appointed pursuant to~~ IN A DISPUTE ARISING UNDER subparagraph (II) of this paragraph (b) ~~regarding maximum medical improvement~~ shall be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner ~~selected by the director~~ has been filed with the division.

(b.5) When an authorized treating physician providing primary care who is not accredited under the level II accreditation program pursuant to section 8-42-101 (3.5) makes a determination that an employee has reached maximum medical improvement, the following procedures shall apply:

(I) (D) If the employee, insurer, or self-insured employer disputes a medical impairment rating, including a finding that there is no medical impairment, made pursuant to sub-subparagraph (A) of this subparagraph (I), the parties to the dispute may select an independent medical examiner ~~by mutual agreement~~ IN ACCORDANCE WITH SECTION 8-42-107.2 to review the rating. ~~The findings of such independent medical examiner shall be binding on both parties and the division. If the parties are unable to agree on an independent medical examiner, the division shall select an independent medical examiner from a list of independent medical examiners maintained by the division.~~ The cost of such independent medical examination shall be borne by the requesting party. The finding of such independent medical examiner ~~concerning the medical impairment rating~~ shall be overcome only by clear and convincing evidence. Any review by an independent medical examiner shall be based on the employee's written medical records only, without further examination, unless a party to the dispute requests that such review include a physical examination by the ~~selected~~ independent medical examiner. The party requesting a physical examination shall pay all additional costs, including, if applicable, the reasonable cost of returning the employee to Colorado.

(II) If the employee is a state resident, such physician shall, within twenty days after the determination of maximum medical improvement, determine whether the employee has sustained any permanent impairment. If the employee has sustained any permanent impairment, such physician shall refer such employee to a level II accredited physician for a medical impairment rating, which shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment". If the referral is not timely made by the authorized treating physician, the insurer or self-insured employer shall refer the employee to a level II accredited physician within forty days after the determination of maximum medical improvement. If the employee, insurer, or self-insured employer disputes the finding regarding permanent medical impairment, including a finding that there is no permanent medical impairment, the parties to the dispute may select an independent medical examiner by mutual agreement. ~~The finding of such independent medical examiner shall be binding on the parties and on the division. If the parties are unable to mutually agree on the selection of an independent medical examiner, the division shall make such selection from a list of independent medical examiners maintained by the division~~ IN ACCORDANCE WITH SECTION 8-42-107.2. The cost of such independent medical examination shall be borne by the requesting party. The finding of any such independent medical examiner ~~regarding a medical impairment rating~~ shall be overcome only by clear and convincing evidence.

(c) When the injured employee's date of maximum medical improvement has been determined pursuant to paragraph (b) of this subsection (8), and there is a determination that permanent medical impairment has resulted from the injury, the authorized treating physician shall determine a medical impairment rating as a percentage of the whole person based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991. Except for a determination by the authorized treating physician providing primary care that no permanent medical impairment has resulted from the injury, any physician who determines a medical impairment rating shall have received accreditation under the level II accreditation program pursuant to section 8-42-101. For purposes of determining levels of medical impairment, the physician shall not render a medical impairment rating based on chronic pain without anatomic or physiologic correlation. Anatomic correlation must be based on objective findings. If either party disputes the authorized treating physician's finding of medical impairment, including a finding that there is no permanent medical impairment, the parties may select an independent medical examiner by mutual agreement. ~~The finding of such independent medical examiner shall be binding on the parties and on the division. If the parties are unable to mutually agree on the selection of an independent medical examiner, the division shall select an independent medical examiner from a list of independent medical examiners maintained by the division~~ IN ACCORDANCE WITH SECTION 8-42-107.2. The cost of such independent medical examination shall be borne by the requesting party. The finding of such independent medical examiner ~~regarding the medical impairment rating~~ shall be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner ~~selected by the director~~ has been filed with the division.

SECTION 3. 8-43-203 (2) (b), Colorado Revised Statutes, is amended to read:

8-43-203. Notice concerning liability - notice to claimant. (2) (b) (I) If the

employer or, if insured, the employer's insurance carrier admits liability, such notice shall specify the amount of compensation to be paid, to whom compensation will be paid, the period for which compensation will be paid, and the disability for which compensation will be paid, and payment thereon shall be made ~~forthwith~~ IMMEDIATELY.

(II) An admission of liability for final payment of compensation shall include a statement that this is the final admission by the workers' compensation insurance carrier in the case, that the claimant may contest this admission if the claimant feels entitled to more compensation, to whom the claimant should provide written objection, and notice TO THE CLAIMANT that THE CASE WILL BE AUTOMATICALLY CLOSED AS TO THE ISSUES ADMITTED IN THE FINAL ADMISSION if the claimant does not, WITHIN THIRTY DAYS AFTER THE DATE OF THE FINAL ADMISSION, contest the final admission in writing ~~within sixty days of the date of the final admission the case will be automatically closed as to the issues admitted in the final admission~~ AND REQUEST A HEARING ON ANY DISPUTED ISSUES THAT ARE RIPE FOR HEARING, INCLUDING THE SELECTION OF AN INDEPENDENT MEDICAL EXAMINER PURSUANT TO SECTION 8-42-107.2 IF AN INDEPENDENT MEDICAL EXAMINATION HAS NOT ALREADY BEEN CONDUCTED. When the final admission is predicated upon medical reports, such reports shall accompany the final admission.

SECTION 4. 8-46-105, Colorado Revised Statutes, is amended to read:

8-46-105. Calculation of premium - permanent total disability - employer may request examination. (1) Effective July 1, 1993, in any case in which an employee previously has sustained permanent partial disability and, in a subsequent injury, sustains additional permanent partial disability and it is shown that the combined industrial disabilities render the employee permanently and totally disabled, then the premiums of the employer in whose employ the employee sustained such subsequent injury shall be determined only on the basis of the impairment rating for such subsequent injury and not on the basis of the employee's permanent total disability. If such employer disputes the impairment rating for the subsequent injury, the employer shall request an independent medical examination pursuant to the procedures set forth in section ~~8-42-107~~ 8-42-107.2. The finding of the independent medical examiner regarding the impairment rating may be overcome only by clear and convincing evidence. The total cost of the employee's permanent total disability shall not be considered in determining the employer's premiums, but shall be considered by the commissioner of insurance in setting rates.

(2) In any case in which an employee becomes disabled by an occupational disease and the employer is liable for benefits pursuant to section 8-41-304 (2), then the premiums of the employer in whose employ the employee became disabled shall be determined only on the basis of the impairment rating for the portion of the occupational disease attributable to such employer and not on the basis of the combination of such portion and any prior impairment resulting from such occupational disease. For the purposes of premium calculations, if such employer disputes the impairment rating for the occupational disease, the employer shall request an independent medical examination pursuant to the procedures set forth in section ~~8-42-107~~ 8-42-107.2. The finding of the independent medical examiner regarding the impairment rating may be overcome only by clear and convincing evidence. The total cost of the employee's occupational disease shall not be

considered in determining the employer's premiums, but shall be considered by the commissioner of insurance in setting rates.

SECTION 5. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to cases of injuries occurring on or after the applicable effective date of this act.

Approved: June 4, 1998