

**CHAPTER 89—S.F.No. 1159**

*An act relating to workers' compensation; adopting recommendations of the Workers' Compensation Advisory Council; increasing amount available for remodeling or alteration projects; requiring rulemaking; appropriating money; amending Minnesota Statutes 2010, sections 14.48, subdivisions 2, 3; 14.49; 14.50; 176.106, subdivisions 1, 3, 5, 6, 7, 8, 9; 176.137, subdivisions 2, 4, 5; 176.238, subdivision 6; 176.305, subdivisions 1, 1a; 176.307; 176.341, subdivision 4.*

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

Section 1. Minnesota Statutes 2010, section 14.48, subdivision 2, is amended to read:

Subd. 2. **Chief administrative law judge.** The office shall be under the direction of a chief administrative law judge who shall be learned in the law and appointed by the governor, with the advice and consent of the senate, for a term ending on June 30 of the sixth calendar year after appointment. Senate confirmation of the chief administrative law judge shall be as provided by section 15.066. The chief administrative law judge may hear cases and shall appoint additional administrative law judges and compensation judges to serve in the office as necessary to fulfill the duties ~~prescribed in chapters 14 and 176 of the Office of Administrative Hearings.~~ The chief administrative law judge may delegate to a subordinate employee the exercise of a specified statutory power or duty as deemed advisable, subject to the control of the chief administrative law judge. Every delegation must be by written order filed with the secretary of state. The chief administrative law judge is subject to the provisions of the Minnesota Constitution, article VI, section 6, the jurisdiction of the Board on Judicial Standards, and the provisions of the Code of Judicial Conduct.

Sec. 2. Minnesota Statutes 2010, section 14.48, subdivision 3, is amended to read:

Subd. 3. **Administrative law judges and compensation judges.** (a) All administrative law judges and compensation judges shall be in the classified service except that the chief administrative law judge shall be in the unclassified service, but may be removed only for cause.

(b) All administrative law judges and workers' compensation judges must be learned in the law and must be free of any political or economic association that would impair their ability to function in a fair and impartial manner. Administrative law judges shall have demonstrated knowledge of administrative procedures and workers' compensation judges shall have demonstrated knowledge of workers' compensation laws.

(c) ~~The appointment of individuals as workers' compensation judges or as administrative law judges does not preclude the chief administrative law judge from establishing a system of training to enable them to acquire demonstrable knowledge and to become qualified to conduct hearings in the area other than the area of their original appointment.~~ Only compensation judges shall conduct administrative conferences.

hearings, or other workers' compensation proceedings within the jurisdiction of the Office of Administrative Hearings under chapter 176, unless the proceeding is required to be conducted under chapter 14. Conducting hearings in the ~~other~~ administrative law area does not affect ~~an administrative law judge's or~~ a workers' compensation judge's job class established pursuant to section 43A.07 or seniority within that job class. The chief administrative law judge shall annually notify the Department of Management and Budget of the amount of credit payable to the workers' compensation special fund for time spent by workers' compensation judges on noncompensation proceedings.

(d) Administrative law judges and compensation judges are subject to the provisions of the Code of Judicial Conduct. Administrative law and compensation judges may, however, serve as a member of a governmental board when so directed by the legislature. The chief administrative law judge shall provide training to administrative law and compensation judges about the requirements of the code and shall apply the provisions of the code to their actions. Only administrative law judges serving as temporary judges under a written contract are considered to be part-time judges for purposes of the code. Reports required to be filed by the code must be filed with the chief administrative law judge. The chief administrative law judge shall apply the provisions of the Code of Judicial Conduct, to the extent applicable, to the other administrative law and compensation judges in a manner consistent with interpretations made by the Board on Judicial Standards. The chief administrative law judge shall follow the procedural requirements of the commissioner's plan for state employees if any adverse personnel action is taken based in whole or in part as a violation of the Code of Judicial Conduct.

(e) In addition to other duties provided by law, workers' compensation and administrative law judges may mediate, arbitrate, or take other appropriate action on matters referred to the Office of Administrative Hearings by any member of the federal or state judicial branch or by the Workers' Compensation Court of Appeals.

Sec. 3. Minnesota Statutes 2010, section 14.49, is amended to read:

#### **14.49 TEMPORARY ADMINISTRATIVE LAW JUDGES.**

When regularly appointed administrative law judges ~~or compensation judges~~ are not available, the chief administrative law judge may contract with qualified individuals to serve as administrative law judges ~~or compensation judges~~. Such temporary administrative law judges ~~or compensation judges~~ shall not be employees of the state. Compensation judges must be employees of the state, except that when all available regularly appointed compensation judges are disqualified from a specific case under the Code of Judicial Conduct, the chief administrative law judge may contract with a workers' compensation attorney or former workers' compensation judge to serve as a compensation judge for that case.

Sec. 4. Minnesota Statutes 2010, section 14.50, is amended to read:

#### **14.50 HEARINGS BEFORE ADMINISTRATIVE LAW JUDGE.**

All hearings of state agencies required to be conducted under this chapter shall be conducted by an administrative law judge assigned by the chief administrative law judge or by a workers' compensation judge assigned by the chief administrative law judge as provided in section 14.48. All hearings required to be conducted under chapter 176 shall be conducted by a compensation judge assigned by the chief administrative law judge ~~or by an administrative law judge assigned by the chief administrative law judge as provided~~

~~in section 14.48.~~ In assigning administrative law judges or compensation judges to conduct ~~such~~ hearings under this chapter, the chief administrative law judge shall attempt to utilize personnel having expertise in the subject to be dealt with in the hearing. It shall be the duty of the judge to: (1) advise an agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests; (2) conduct only hearings for which proper notice has been given; (3) see to it that all hearings are conducted in a fair and impartial manner. Except in the case of workers' compensation hearings involving claims for compensation it shall also be the duty of the judge to make a report on each proposed agency action in which the administrative law judge functioned in an official capacity, stating findings of fact and conclusions and recommendations, taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant procedural requirements of law or rule, and (iii) in rulemaking proceedings, demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts.

Sec. 5. Minnesota Statutes 2010, section 176.106, subdivision 1, is amended to read:

Subdivision 1. **Scope.** All determinations by the commissioner or ~~the commissioner's designee~~ compensation judge pursuant to section 176.102, 176.103, 176.135, or 176.136 shall be in accordance with the procedures contained in this section. For medical disputes under sections 176.135 and 176.136, the commissioner ~~or the commissioner's designee~~ shall have jurisdiction to hold an administrative conference and issue decisions and orders under this section if the amount in dispute at the time the medical request is filed is \$7,500 or less.

Sec. 6. Minnesota Statutes 2010, section 176.106, subdivision 3, is amended to read:

Subd. 3. **Conference.** The matter shall be scheduled for an administrative conference within 60 days after receipt of the request for a conference. Notice of the conference shall be served on all parties no later than 14 days prior to the conference, unless the commissioner or compensation judge determines that a conference shall not be held. The commissioner or compensation judge may order an administrative conference before the commissioner's designee whether or not a request for conference is filed.

The commissioner or compensation judge may refuse to hold an administrative conference and refer the matter for a settlement or pretrial conference or may certify the matter to the Office of Administrative Hearings for a full hearing before a compensation judge.

Sec. 7. Minnesota Statutes 2010, section 176.106, subdivision 5, is amended to read:

Subd. 5. **Decision.** Unless the matter is referred for other proceedings under subdivision 3, a written decision shall be issued by the ~~commissioner's designee~~ commissioner or compensation judge determining all issues considered at the conference or if a conference was not held, based on the written submissions. Disputed issues of fact shall be determined by a preponderance of the evidence. The decision must be issued within 30 days after the close of the conference or if no conference was held, within 60 days after receipt of the request for conference. The decision must include a statement indicating the right to request a de novo hearing before a compensation judge and how to initiate the request.

Sec. 8. Minnesota Statutes 2010, section 176.106, subdivision 6, is amended to read:

Subd. 6. **Penalty.** At a conference, if the insurer does not provide a specific reason for nonpayment of the items in dispute, the ~~commissioner's designee~~ commissioner or compensation judge may assess a penalty of \$300 payable to the commissioner for deposit in the assigned risk safety account, unless it is determined that the reason for the lack of specificity was the failure of the insurer, upon timely request, to receive information necessary to remedy the lack of specificity. This penalty is in addition to any penalty that may be applicable for nonpayment.

Sec. 9. Minnesota Statutes 2010, section 176.106, subdivision 7, is amended to read:

Subd. 7. **Request for hearing.** (a) Any party aggrieved by the decision of the ~~commissioner's designee~~ commissioner or compensation judge may request a formal hearing by filing the request with the commissioner and serving the request on all parties no later than 30 days after the decision. Requests shall be referred to the Office of Administrative Hearings for a de novo hearing before a compensation judge. When a compensation judge issued the administrative decision under subdivision 5, the formal de novo hearing must be held before a compensation judge other than the compensation judge who presided over the administrative conference.

(b) Except where the only issues to be determined pursuant to this section involve liability for past treatment or services that will not affect entitlement to ongoing or future proposed treatment or services under section 176.102 or 176.135, the commissioner shall refer a timely request to the Office of Administrative Hearings within five working days after filing of the request and the hearing at the Office of Administrative Hearings must be held on the first date that all parties are available but not later than 60 days after the Office of Administrative Hearings receives the matter. Following the hearing, the compensation judge must issue the decision within 30 days. The decision of the compensation judge is appealable pursuant to section 176.421.

Sec. 10. Minnesota Statutes 2010, section 176.106, subdivision 8, is amended to read:

Subd. 8. **Denial of primary liability.** The commissioner does not have authority to make determinations relating to medical or rehabilitation benefits when there is a genuine dispute over whether the injury initially arose out of and in the course of employment; ~~except as provided by section 176.305.~~

Sec. 11. Minnesota Statutes 2010, section 176.106, subdivision 9, is amended to read:

Subd. 9. **Subsequent causation issues.** If initial liability for an injury has been admitted or established and an issue subsequently arises regarding causation between the employee's condition and the work injury, the commissioner or compensation judge may make the subsequent causation determination subject to de novo hearing by a compensation judge ~~with a right to review by the court of appeals,~~ as provided in ~~this chapter~~ subdivision 7.

Sec. 12. Minnesota Statutes 2010, section 176.137, subdivision 2, is amended to read:

Subd. 2. **Cost.** The pecuniary liability of an employer for remodeling or alteration required by this section is limited to prevailing costs in the community for remodeling or alteration of that type. The costs of obtaining the architectural certification and supervision required by this section are included in the \$75,000 limit in subdivision 5.

Sec. 13. Minnesota Statutes 2010, section 176.137, subdivision 4, is amended to read:

Subd. 4. **Certification.** (a) Except as provided in paragraph (b), no award may be made except upon the certification of a licensed architect to the division or Workers' Compensation Court of Appeals that the proposed alteration or remodeling of an existing residence or the building or purchase of a new or different residence is reasonably required for the purposes specified in subdivision 1. The Council on Disability shall advise the division or Workers' Compensation Court of Appeals as provided in section 256.482, subdivision 5, clause (7). The alteration or remodeling of an existing residence, or the building or purchase of a new home must be done under the supervision of a licensed architect relative to the specific needs to accommodate the disability.

(b) Remodeling or alteration projects do not require an architect's certification and supervision if the project is:

(1) approved by the Council on Disability;

(2) performed by a residential building contractor or residential remodeler licensed under section 326B.805, subdivision 1; and

(3) approved by a certified building official or certified accessibility specialist under section 326B.133, subdivision 3a, paragraphs (b) and (d), who states in writing that the proposed remodeling or alterations are reasonably required to enable the employee to move freely into and throughout the residence and to otherwise accommodate the disability.

Sec. 14. Minnesota Statutes 2010, section 176.137, subdivision 5, is amended to read:

Subd. 5. **Limitation.** An employee is limited to ~~\$60,000~~ \$75,000 under this section for each personal injury.

Sec. 15. Minnesota Statutes 2010, section 176.238, subdivision 6, is amended to read:

Subd. 6. **Expedited hearing before compensation judge.** (a) A hearing before a compensation judge shall be held within 60 calendar days after the office receives the file from the commissioner if:

(1) an objection to discontinuance has been filed under subdivision 4 within 60 calendar days after the notice of discontinuance was filed and where no administrative conference has been held;

(2) an objection to discontinuance has been filed under subdivision 4 within 60 calendar days after ~~the commissioner's~~ an interim administrative decision under this section has been issued;

(3) a petition to discontinue has been filed by the insurer in lieu of filing a notice of discontinuance; or

(4) a petition to discontinue has been filed within 60 calendar days after the ~~commissioner's~~ interim administrative decision under this section has been issued.

(b) If the petition or objection is filed later than the deadlines listed above, the expedited procedures in this section apply only where the employee is unemployed at the time of filing the objection and shows, to the satisfaction of the chief administrative judge, by sworn affidavit, that the failure to file the objection within the deadlines was due to some infirmity or incapacity of the employee or to circumstances beyond the employee's control. The hearing shall be limited to the issues raised by the notice or petition unless all parties agree to expanding the issues. If the issues are expanded, the time limits for hearing and issuance of a decision by the compensation judge under this subdivision shall not apply.

(c) Once a hearing date has been set, a continuance of the hearing date will be granted only under the following circumstances:

(1) the employer has agreed, in writing, to a continuation of the payment of benefits pending the outcome of the hearing; or

(2) the employee has agreed, in a document signed by the employee, that benefits may be discontinued pending the outcome of the hearing.

(d) Absent a clear showing of surprise at the hearing or the unexpected unavailability of a crucial witness, all evidence must be introduced at the hearing. If it is necessary to accept additional evidence or testimony after the scheduled hearing date, it must be submitted no later than 14 days following the hearing, unless the compensation judge, for good cause, determines otherwise.

(e) When a compensation judge issued the interim administrative decision, the de novo hearing under paragraph (a), clauses (2) and (4), must be held before a compensation judge other than the compensation judge who presided over the administrative conference. The compensation judge shall issue a decision pursuant to this subdivision within 30 days following the close of the hearing record.

Sec. 16. Minnesota Statutes 2010, section 176.305, subdivision 1, is amended to read:

Subdivision 1. **Hearings on petitions.** The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. A clear copy suitable for imaging shall be filed with the commissioner together with an appropriate affidavit of service. ~~When any petition has been filed with the Workers' Compensation Division, The commissioner shall, within ten days, refer the matter presented by the petition for a settlement conference under this section, for an administrative conference under section 176.106, or for hearing all petitions involving issues over which the commissioner lacks jurisdiction to the office.~~

Sec. 17. Minnesota Statutes 2010, section 176.305, subdivision 1a, is amended to read:

Subd. 1a. **Settlement and pretrial conferences; summary decision.** The commissioner chief administrative law judge shall promptly assign the petition to a compensation judge under section 176.307, and shall schedule a settlement conference, if appropriate, within 60 days after receiving the petition before a compensation judge, to be held no later than 180 days after a claim petition was filed, or 45 days after a petition to discontinue, objection to discontinuance, or request for formal hearing was filed.

All parties must appear at the settlement conference, either personally or by representative, must be prepared to discuss settlement of all issues, and must be prepared to discuss or present the information required by the joint rules of the division and the office. If a representative appears on behalf of a party, the representative must have authority to fully settle the matter. The parties shall serve and file a pretrial statement no fewer than five days before the settlement conference.

If settlement is not reached, the presiding officer chief administrative law judge shall schedule a hearing to be held within 90 days from the scheduled settlement conference. However, the hearing must be held earlier than 90 days from the scheduled settlement conference if this chapter requires an expedited hearing to be held at an earlier date. The hearing must be held before a compensation judge other than the compensation judge who conducted the settlement conference. The compensation judge assigned to hold the

hearing may choose to conduct a pretrial conference to clarify the issues and evidence that will be presented at the hearing.

Cancellations and continuations of proceedings are disfavored but may be granted upon the showing of good cause under section 176.341, subdivision 4.

The compensation judge conducting the settlement conference may require the parties to present copies of all documentary evidence not previously filed and a summary of the evidence they will present at a formal hearing. If appropriate, a written summary decision shall be issued within ten days after the conference stating the issues and a determination of each issue. If a party fails to appear at the conference, all issues may be determined contrary to the absent party's interest, provided the party in attendance presents a prima facie case.

The summary decision is final unless a written request for a formal hearing is served on all parties and filed with the commissioner within 30 days after the date of service and filing of the summary decision. Within ten days after receipt of the request, the commissioner shall certify the matter to the office for a de novo hearing. In proceedings under section 176.2615, the summary decision is final and not subject to appeal or de novo proceedings.

Sec. 18. Minnesota Statutes 2010, section 176.307, is amended to read:

**176.307 COMPENSATION JUDGES; BLOCK SYSTEM.**

The chief administrative law judge ~~must~~ may assign workers' compensation cases to compensation judges using a block system type of assignment that, among other things, ensures that a case will remain with the same judge from commencement to conclusion ~~unless, except that the judge is~~ must be removed from the case by exercise of when:

(1) a party exercises a legal right of a party or by incapacity to do so;

(2) the judge is incapacitated or is otherwise unable to hold a hearing; or

(3) assignment of a different judge is required by section 176.106, subdivision 7; 176.238, subdivision 6; 176.305, subdivision 1a; or the Minnesota Code of Judicial Conduct.

The block system ~~must be the principal~~ shall be the preferred means of assigning cases, but it may be supplemented by other systems of case assignment to ensure that cases are timely decided.

Sec. 19. Minnesota Statutes 2010, section 176.341, subdivision 4, is amended to read:

Subd. 4. **Continuances.** Only the chief administrative law judge or designee, on a showing of good cause, may grant a continuance of a hearing at the office. Except in cases of emergency or other good cause shown, any request for a continuance must be signed by both the party and the attorney seeking the continuance.

A continuance of a hearing will be granted only upon a showing of good cause. Good cause is established when the underlying eventuality is unforeseen, is not due to lack of preparation, is relevant, is brought to the chief administrative law judge's attention in a timely manner and does not prejudice the adversary.

Continuances will not be granted for the reason that an attorney for one of the parties has scheduled a vacation for the date set for the hearing unless the attorney has, prior to the setting of the hearing date, notified the office of the unavailable dates.

Continuances which are requested during the course of a hearing are subject to the same standards but may be granted or denied by the compensation judge assigned to the hearing. Continuances of prehearing or settlement conferences ~~at the department or~~ at the office are subject to the same standards but may be granted or denied by a compensation judge, the calendar judge, or other presiding officer assigned to the prehearing or settlement conference. Cancellation of settlement conferences shall be granted if all parties agree to cancellation.

Sec. 20. **MEDICAL FEE REVIEW; WHOLESALE ACQUISITION COST STANDARD.**

The commissioner of labor and industry may replace the "average wholesale price" standard in Minnesota Rules, part 5221.4070, with the "wholesale acquisition cost" standard. The wholesale acquisition cost must be increased by the percentage necessary to establish maximum fees that are the same as the maximum fees currently provided under that part. The commissioner shall use the procedures in Minnesota Statutes, section 14.386, paragraph (a), to amend Minnesota Rules, part 5221.4070, for this purpose, except that the amendments are not subject to expiration under section 14.386, paragraph (b). This section does not limit the commissioner's existing authority under this chapter to further amend the rules using the regular rule adoption procedures in chapter 14, and shall not be considered a new grant of rulemaking authority for purposes of Minnesota Statutes, section 14.125.

Sec. 21. **APPROPRIATION.**

\$600,000 is appropriated to the commissioner of labor and industry from the special compensation fund for the purposes of implementing a case management system and electronic filing system at the Office of Administrative Hearings. This is a onetime appropriation. Funds appropriated in this section are available only to the extent requested by the chief administrative law judge of the Office of Administrative Hearings. The review panel convened by the Office of Administrative Hearings to review any proposals for a case management system and electronic filing system, shall include one labor representative and one business representative serving pursuant to Minnesota Statutes, section 175.007, subdivision 1, paragraph (b) or (c).

Sec. 22. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall change the phrase "commissioner's decision" to "interim administrative decision" wherever it appears in Minnesota Statutes, sections 176.238 and 176.239.

Sec. 23. **EFFECTIVE DATE.**

(a) Sections 1 to 11 and 15 to 21 are effective August 1, 2011.

(b) Sections 12 to 14 are effective the day following final enactment.



Presented to the governor May 24, 2011

Signed by the governor May 27, 2011, 10:28 a.m.