SPONSOR: Rep. Mulrooney & Sen. Marshall
Reps. Brady, Osienski; Sen. Walsh

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 408
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE DELAWARE WORKERS' COMPENSATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend Chapter 23, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2345 Hearing upon disagreement on amount of compensation or benefits.

If the employer and employee, or the employee's dependents in the case of the employee's death, fail to reach agreement in regard to compensation under this chapter, or if after they reach such an agreement the Board shall refuse to approve the same, either party may notify the Department of the facts and the Department shall thereupon notice the time and place of hearing which shall be served on all parties in interest personally, by secure email with an electronic receipt or by certified mail. The Board or a hearing officer with consent of the parties shall hear and determine the matter in accordance with the facts and the law and state its conclusions of fact and rulings of law.

§ 2346 Hearing upon disagreement on charges for medical and other services and benefits.

If any person charged with the payment of medical and other services and the provider to whom said payment is due fail to reach an agreement in regard to such charges, any interested party may notify the Department of the facts. The Department shall thereupon notice the time and place of hearing sent by certified mail or by secure email with an electronic receipt to all parties in interest. The Board shall hear and determine the matter. No party to the proceedings shall have any liability for the payment of charges in excess of the amount deemed reasonable and necessary; provided, that the provider is subject to the jurisdiction of the Board and made a party to the proceedings. As provided in § 2320(7) of this title, the Board may, in any case, appoint a disinterested and duly-qualified physician to make any necessary medical examination of the employee and testify in respect thereto. Such medical examination shall not be referred to as an "Independent Medical Examination" or "IME" in any proceeding or on any document relating to a matter under this chapter; nor shall any examination, required by the employer, by any other doctor, who is an employee of an insurance company, or who is paid by an insurance company, or who is under contract to an insurance company, be referred to as an "Independent Medical

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Examination" or "IME." The Board may impose a fine not to exceed $500 for each use of the term "Independent Medical Exam" or "IME" in violation of this section.

§ 2347 Review by Board of agreements or awards; grounds; modification of award.

On the application of any party in interest on the ground that the incapacity of the injured employee has subsequently terminated, increased, diminished or recurred or that the status of the dependent has changed, the Board may at any time, but not oftener than once in 6 months, review any agreement or award.

On such review, the Board may make an award ending, diminishing, increasing or renewing the compensation previously agreed upon or awarded, and designating the persons entitled thereto, subject to this chapter, and shall state its conclusions of facts and rulings of law. The Department shall immediately send to the parties a copy of the award by personal delivery, by secure email with electronic receipt, or by certified mail.

This section shall not apply to a commutation of payments under § 2358 of this title.

Compensation payable to an employee, under this chapter, shall not terminate until and unless the Board enters an award ending the payment of compensation after a hearing upon review of an agreement or award, provided that no petition for review, hearing or an order by the Board shall be necessary to terminate compensation where the parties to an award or an agreement consent to the termination. No petition for review shall be accepted by the Department unless it is accompanied by proof that a copy of the petition for review has been served by certified mail upon the other party to the agreement or award. Within 5 days after the filing of a petition for review, the Department shall notify each party concerned of the time, date and place scheduled for the hearing upon the petition.

Compensation shall be paid by the Department to the employee after the filing of the employer's petition to review from the Workers' Compensation Fund until the parties to an award or agreement consent to the termination or until the Board enters an order upon the employer's petition to review. After the parties to an award or agreement consent to the reinstatement of compensation or, after the employer withdraws its petition, or, if the Industrial Accident Board orders the employer's petition dismissed, the employer shall repay to the Workers' Compensation Fund the amount paid out by the Department. A petition to review must be withdrawn whenever the parties to an agreement settle the claim without a hearing before the Board or whenever an employee consents to a termination after a petition to review has been filed with the Board.

The first 2 sentences of the fifth paragraph of this section shall apply only to employers insured by insurance carriers. Nor shall they apply to self-insured employers who shall be responsible for payment of their own claims under this section.

Upon any order imposed by the Insurance Commissioner under § 2411(e) of Title 18 requiring payment of restitution following a finding of insurance fraud, and after all rights of appeal from said order have been waived or exhausted, the Board shall, upon motion of the party to whom restitution was ordered and after hearing and opportunity to

be heard, allow a credit against benefits payable under §§ 2324, 2325 and/or 2326 of this title, for any restitution ordered by the Insurance Commissioner remaining unpaid. The Board shall also review orders establishing such credits upon motion based upon any change in circumstances that may warrant modification or rescission of a prior order.

§ 2348 Hearings; notice of awards; evidence.

(c) The Department shall schedule a hearing by fixing its time and place, subject to review by the Board upon written objection by a party. The notice shall be given in hand, sent by secure email with an electronic receipt, or by certified mail, return receipt requested. Hearings pursuant to §§ 2324, 2325 and 2347 of this title shall be heard as expeditiously as practicable, but, absent compliance with subsection (h) of this section, in no case more than 120 days from the date of the notice of pretrial conference to be issued by the Department. Unless excused for good cause shown, failure of any or all parties in interest to appear at a duly scheduled hearing or to petition for a continuance shall bar such parties from any further action concerning an adverse decision, a decision by default or a dismissal of a petition for hearing and award.

(k) No later than 14 days after a hearing, the Board shall render a written decision that succinctly and clearly states its findings of fact and conclusions of law. To that end, where appropriate, the Board may render a decision at the hearing and read such decision into the record for its incorporation in the hearing transcript. Each Board decision shall be filed among the Board's records and a copy thereof shall be served personally on, sent by secure email with an electronic receipt, or sent by certified mail to each of the parties in interest or to the attorneys representing the parties, if such parties are represented by counsel. In any instance where a decision cannot be reached within 14 days, the Board shall provide the parties with a written estimate of when the decision will be rendered. Such additional time shall not exceed an additional 14 days.

~~§ 2349 Finality of awards; appeals; limitation period.~~

§2349. Exceptions.

An award of the Board, in the absence of fraud, shall be final and conclusive between the parties, except as provided in § 2347 of this title, unless within 30 days of the day the notice of the award was mailed to the parties or electronically received by secured email, either party appeals to the Superior Court for the county in which the injury occurred or, if the injury occurred out of the State, to the Superior Court in and for the county in which the hearing was had. Neither the Board nor any member of the Board shall be named as a party to the appeal. Whenever an award shall become final and conclusive pursuant to this section, the prevailing party, at any time after the running of all appeal periods, may, if a proper appeal has not been filed, file with the prothonotary's office, for the county having jurisdiction over the matter, the amount of the award and the date of the award. From the time of such filing, the amount set forth in the award shall thereupon be and constitute a judgment of record in such Court with like force and effect as any other judgment of the Court, except that the renewal provisions of § 4711 of Title 10 shall not be applicable, and a judgment obtained under this

section shall automatically continue for a period of 20 years from the date of the award. The prothonotary shall enter all such certificates in the regular judgment docket and index them as soon as they are filed by the prevailing party.