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Employee's Recovery from Injury; Increase Maximum Disability Payments

Georgia State University Law Review

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LABOR AND INDUSTRIAL RELATIONS

Workers' Compensation: Provide Employers Three Methods for Providing Medical Care for Employees; Delete Requirement that Board Send Notice of Claim to All Parties; Extend Time for Hearing Following Notice; Alter Appellate Review Standard; Define Certain Terms; Provide that Alcohol or Controlled Substance Use May Prevent Recovery by Employee in Certain Circumstances; Provide for Fines for Fraud in Certain Circumstances; Provide for Admissibility of Report from Prospective Employer in Lieu of Oral Technology; Provide Grace Period to Test Employee's Recovery from Injury; Increase Maximum Disability Payments

CODE SECTIONS:	O.C.G.A. §§ 34-9-1, -17 to -18 (amended), -23 (new), -42, -100, -102 to -103, -137, -200 to -201 (amended), -208 (new), -240, -261 to -262 (amended)
BILL NUMBER:	HB 1505
ACT NUMBER:	1107
SUMMARY:	The Act defines when the use of alcohol or a controlled substance will bar recovery by an injured employee. The Act gives the Workers' Compensation Board greater ability to fine one who commits fraud, deletes the requirement that the Board send notice of a claim to the parties, amends the appellate review standard of the Board, and extends the time to schedule hearings. The Act gives injured employees the chance to return to work without penalizing the employee if the employee is unable to perform work tasks and allows an employer to suspend benefits to an injured employee if the employee refuses to attempt to return to work when the offered job is within the employee's capabilities. The Act gives employers more choice in deciding how they provide care for injured employees.
EFFECTIVE DATE:	July 1, 1994

History

The two driving forces behind the drafting of HB 1505 were to decrease workers' compensation health care costs and to improve the efficiency of the daily functions of the Workers' Compensation Board (the Board).[1] Georgia's workers' compensation system has experienced

1. Interview with Matt Garver, Policy Analyst, House of Representatives Research

great increases in medical and indemnity costs.[2] Medical costs increased at a rate of 14.7 percent during 1980-1985 and this trend continues.[3] The large increase in workers' compensation costs has caused insurance premiums to rise dramatically and is a detriment to economic development in Georgia.[4] Workers' compensation insurance premiums have risen at an annual rate of eighteen percent since 1984.[5]

HB 1505 was a year in the making.[6] Judge Harold Dawkins, member of the Board and former state senator, was the primary drafter of HB 1505.[7] Both organized labor and the insurance industry lobbied for HB 1505, and the bill received bipartisan support.[8] The Act fine tunes rather than overhauls the workers' compensation system.[9]

HB 1505

Amendment

After introduction in the House, HB 1505 was amended only once.[10] The House Committee on Industrial Relations added only one word to the amendment for clarity.[11]

Decreasing Health Care Costs

The Act amends Code section 34-9-201 to give employers three choices in determining the manner in which they provide medical care to injured employees.[12] First, employers may provide a panel of at least four physicians from which employees may select a health care

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Office (Apr. 5, 1994) [hereinafter Garver Interview].

2. National Council on Compensation Insurance, Georgia Closed Claim Analysis 1 (Nov. 1993) (available in Georgia State University College of Law Library).

3. National Council on Compensation Insurance, Georgia 1993 Cost Containment Resource Booklet, 1 (Jan. 1993) (available in Georgia State University College of Law Library).

4. Telephone Interview with Rep. Alan T. Powell, House District No. 23 (Apr. 5, 1994) [hereinafter Powell Interview]. Rep. Powell cosponsored HB 1505. *Id.*

5. Georgia Closed Claim Analysis, *supra* note 2, at 4.

6. Garver Interview, *supra* note 1.

7. *Id.*

8. *Id.*

9. Powell Interview, *supra* note 4.

10. HB 1505 (HCS), 1994 Ga. Gen. Assem.

11. *Id.* The House Committee on Industrial Relations amended HB 1505 by changing the grace period for which an injured employee can attempt to perform a job within the employee's limitation from "15 days" to "15 working days" without penalty. *Id.*

12. Judge Harold Dawkins, Bill Summary of HB 1505 (available in Georgia State University College of Law Library) [hereinafter Bill Summary]. The employers may choose freely among the three alternatives, but once an alternative has been chosen, its provisions become mandatory. O.C.G.A. § 34-9-201(b) (Supp. 1994).

provider.[13] Second, they may use a panel of physicians maintained by the Board.[14] Lastly, employers may opt to use a board-certified, managed health care organization.[15] It is estimated that the implementation of managed health care organizations will cut medical costs within the workers' compensation system by two to four-and-one-half percent.[16]

Increasing Efficiency of the Board

The Act removes the requirement that the Board send notice of a claim to the parties.[17] This provision eliminates duplicate notice because a party must already send notice to all involved parties when filing a claim.[18] The removal of this requirement will save the Board an "enormous amount of time and money."[19]

The Act extends the maximum time the Board can schedule a hearing to ninety days from the date of hearing notice.[20] The previous maximum time for scheduling a hearing was sixty days.[21] Under the sixty-day maximum, eighty-five percent of all hearings were rescheduled.[22] The extension provides parties more time to prepare without requesting that the hearing be rescheduled.[23] The extension will improve Board efficiency since rescheduling a hearing is time consuming and costly.[24]

The Act alters the previous de novo appellate review standard of the Board.[25] The Act requires the Board to accept the findings of fact of

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13. O.C.G.A. § 34-9-201(b)(1) (Supp. 1994).

14. *Id.* § 34-9-201(b)(2) (Supp. 1994).

15. *Id.* §§ 34-9-201(b)(3), -208 (Supp. 1994). O.C.G.A. § 34-9-208 outlines the requirements for establishing a managed health care organization which meets Board standards. The statute is based on Minnesota and Oregon statutes. Bill Summary, *supra* note 12; *see* MINN. STAT. ANN. § 176.1351 (West 1993); OR. REV. STAT. § 656.260 (Supp. 1994).

16. National Council on Compensation Insurance, Memorandum Cost Containment 1 (Mar. 28, 1994) (available in Georgia State University College of Law Library).

17. *Compare* O.C.G.A. § 39-4-100 (Supp. 1994) *with* 1978 Ga. Laws 2220, § 11. Georgia law previously provided that the Board notify the parties by mail of the filing of a claim within ten days. 1978 Ga. Laws 2220, § 11.

18. O.C.G.A. § 9-11-5(a) (1993).

19. Bill Summary, *supra* note 12.

20. O.C.G.A. § 34-9-102(a) (Supp. 1994).

21. 1992 Ga. Laws 1942, § 10. Georgia law previously provided that "no hearing shall be scheduled less than 30 days nor more than 60 days from the date of the hearing notice." *Id.*

22. Bill Summary, *supra* note 12.

23. *Id.*

24. *Id.*

25. *Id.; see also* O.C.G.A. § 34-9-103 (1993); Complete Auto Transit, Inc. v. Davis, 126 S.E.2d 909 (Ga. Ct. App. 1962) (holding that the Board's review is a de novo proceeding).

the administrative law judge if "such findings are supported by a preponderance of competent and credible evidence contained within the records."[26] Changing the appellate standard of review should reduce Board costs by limiting the number of frivolous appeals.[27]

Redefining Injury

The Act redefines the term "injury" by including within the definition the "aggravation of a preexisting condition by accident arising out of and in the course of employment, but only for so long as the aggravation . . . continues to be the cause of the disability."[28] This is a codification of current case law which holds that after aggravation, once an employee's injury returns to its preexisting condition, the injury is no longer compensable.[29]

Denial of Compensation for Use of Alcohol or a Controlled Substance

The Act delineates when the use of alcohol or a controlled substance will prevent recovery of compensation by an injured employee.[30] Either a blood alcohol reading of 0.08 or greater within three hours of an accident or verification that a controlled substance is within the blood system within eight hours of an accident will create a rebuttable presumption that the use of the alcohol or the controlled substance caused the accident.[31] An unjustified refusal to submit to a test to determine the presence of alcohol or a controlled substance within the employee's system will also result in the rebuttable presumption that the accident was caused by the alcohol or substance.[32]

Fraud

Fraud is one of the major factors contributing to the high costs of workers' compensation premiums.[33] The Act gives the Board the ability to fine one who knowingly makes "a false statement for the purpose of facilitating the obtaining or denying of any benefit or payment" under the workers' compensation chapter.[34] This

26. O.C.G.A. § 34-9-103(a) (Supp. 1994).
27. Bill Summary, *supra* note 12.
28. O.C.G.A. § 34-9-1(4) (Supp. 1994).
29. *See, e.g.*, Thornton Chevrolet, Inc. v. Morgan, 252 S.E.2d 178 (Ga. Ct. App. 1979).
30. O.C.G.A. § 34-9-17(b) (Supp. 1994).
31. *Id.* § 34-9-17(b)(1)-(2) (Supp. 1994).
32. *Id.* § 34-9-17(b)(3) (Supp. 1994). With the exception of the rebuttable presumptions set forth in O.C.G.A. § 34-9-17(b), the burden of proof shall generally be upon the party who claims an exemption or forfeiture under this Code section. *Id.* § 34-9-17(c) (Supp. 1994).
33. Garver Interview, *supra* note 1.
34. O.C.G.A. § 34-9-18(b) (Supp. 1994). The Act provides for a civil penalty not less

amendment does not prohibit subsequent criminal prosecution, and the misdemeanor provision of current law may be pursued as well.[35]

Admissibility of Report from Prospective Employer in Lieu of Oral Testimony

The Act provides that a signed and dated report from a prospective employer which states that one who applied for a job within one's capabilities and was not hired is admissible in lieu of oral testimony for the purpose of modifying an award or order in a prior decision.[36] An adverse party has the right to object to the admissibility of the report and to cross-examine the person who signed the report.[37]

Grace Period to Test Injury and Increasing Maximum Disability Payments

The Act gives injured employees a window of opportunity in which to attempt to return to work within their capacity, if authorized by their doctor, without penalty if they later feel they are unable to perform the job.[38] The employee has fifteen working days to test the injury.[39] If the injured employee stops working within this grace period, benefits will be immediately reinstated and the burden remains with the employer to prove the employee is not entitled to continued compensation.[40] However, if the injured employee is authorized by the doctor to go back to work and the employee refuses, the employer may suspend benefits and the burden shifts to the employee to prove the employee is still entitled to compensation.[41]

The Act also raises the maximum temporary total disability payment from $250 to $275 per week[42] and raises the maximum temporary partial disability payment from $175 to $192.50 per week.[43]

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than $500 nor more than $5000 per violation. *Id.*

35. Bill Summary, *supra* note 12; *see also* O.C.G.A. § 34-9-19 (1992) (providing for criminal penalties).

36. O.C.G.A. § 34-9-102(e)(3) (Supp. 1994).

37. *Id.*

38. *Id.* § 34-9-240(b)(1) (Supp. 1994).

39. *Id.*

40. *Id.*

41. *Id.* § 34-9-240(b)(2) (Supp. 1994).

42. *Id.* § 34-9-261 (Supp. 1994).

43. *Id.* § 34-9-262 (Supp. 1994).