

1995 BILL 16

Third Session, 23rd Legislature, 44 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 16

WORKERS' COMPENSATION AMENDMENT ACT, 1995

THE MINISTER OF LABOUR

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 16

1995

WORKERS' COMPENSATION AMENDMENT ACT, 1995

(Assented to _____, 1995)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends SA
1981 cW-16

1 *The Workers' Compensation Act is amended by this Act.*

2 *Section 1(1)(a.2) is amended by striking out "section 6" and substituting "section 5.1".*

3 *Section 2.1 is repealed and the following is substituted:*

Corporate
powers

2.1 The Board has the capacity and the rights, powers and privileges of a natural person.

Staff

2.2 Without limiting the generality of section 2.1, the Board may, notwithstanding any other enactment, hire the employees it considers necessary for the purposes of administering this Act and carrying out the business and affairs of the Board.

4 *Section 3 is amended*

(a) *in subsection (1) by repealing clause (b);*

(b) *by adding the following after subsection (1):*

(1.1) During the time that a person is the President of the Board, that person is, by virtue of holding that office, a non-voting member of the board of directors of the Board.

(c) *by adding the following after subsection (5):*

Explanatory Notes

1 Amends chapter W-16 of the Statutes of Alberta, 1981.

2 Section 1(1)(a.2) presently reads:

1(1) In this Act,

(a.2) "Appeals Commission" means the Appeals Commission established under section 6;

3 Section 2.1 presently reads:

2.1(1) Subject to subsection (2), the Board may not acquire or sell, lease or otherwise dispose of real property without the approval of the Lieutenant Governor in Council.

(2) The Board may, without the approval of the Lieutenant Governor in Council, enter into an agreement as lessor or lessee of real property where the term of the lease does not exceed 10 years.

(3) The Board may hire the employees it considers necessary for the purposes of the administration of this Act.

4 Section 3(1)(b) and (5) presently read:

3(1) There shall be a board of directors of the Board, to be appointed by the Lieutenant Governor in Council, consisting of

(b) the President of the Board,

(5) A member of the board of directors, other than the President, shall be appointed for a term not to exceed 3 years, and is eligible for reappointment for 1 additional term, not to exceed 3 years.

(6) Notwithstanding subsection (5), where a member of the board of directors has served 2 terms but was not appointed chairman for the full duration of either term, that member is eligible for appointment as chairman and member of the board of directors for one further term not to exceed 3 years.

5 *Section 4.1 is amended by repealing subsections (1) and (2) and substituting the following:*

President of
Board

4.1(1) The board of directors of the Board shall select and appoint a person to be the President of the Board.

(2) The salary and benefits of the President shall be determined by the board of directors of the Board and be paid out of the Accident Fund.

6 *Section 5 is amended by striking out “President and of the members of the board of directors” and substituting “members of the board of directors of the Board, other than the President.”*

7 *Section 8 is amended by adding the following after subsection (8):*

(9) An appeal from a decision of the claims services review committee or the assessment review committee shall not be accepted unless a written notice of appeal is received by the Appeals Commission within one year from the date that the claims services review committee or assessment review committee made its decision.

(10) Notwithstanding subsection (9), if the chief appeals commissioner, or the appeals commissioner to whom the

5 Section 4.1 presently reads in part:

4.1(1) The Lieutenant Governor in Council shall appoint a person to be the President of the Board, to hold office for a term of not more than 5 years.

(2) The President is eligible for reappointment for additional terms of not more than 5 years each.

(3) The President shall

(a) be the chief executive officer of the Board,

(b) advise and inform the board of directors on the operating, planning and development functions of the Board,

(c) be responsible for the implementation of policy as established by the board of directors,

(d) in accordance with policy as established by the board of directors, be responsible for all functions related to personnel, and

(e) carry out any other functions and duties assigned to him by the board of directors.

6 Section 5 presently reads:

5 The remuneration of the President and of the members of the board of directors shall be prescribed by the Lieutenant Governor in Council and be paid out of the Accident Fund.

7 Time within which to bring an appeal.

chief appeals commissioner delegates, considers there is a justifiable reason for a delay, he may extend, with or without conditions, the deadline for commencing an appeal to the Appeals Commission.

(11) There is no appeal from a decision made under subsection (10).

8 *Section 11(2) is amended*

(a) *by adding “who have performed or are” after “class of persons”;*

(b) *by adding “for the period or periods of time that the work was or is performed” after “of this Act”.*

9 *Section 40 is repealed and the following is substituted:*

Claims
services
review
committee

39.1(1) The Board shall appoint a claims services review committee consisting of not fewer than 3 persons, one of whom shall be designated as the chairman of the claims services review committee.

(2) The chairman of the claims services review committee may designate one or more members of the claims services review committee to conduct a review under section 40 on behalf of the claims services review committee.

(3) When one or more members of the claims services review committee are designated under subsection (2) to conduct a review, a decision made in respect of that review is a decision of the claims services review committee.

(4) Where a claims adjudicator or a physician referred to in section 37 or 38 made a decision or was involved in a matter that is the subject of a review under section 40, that person is not eligible to conduct a review in respect of that decision or matter.

Review of
decision

40(1) Where a person has a direct interest in a claim for compensation in respect of which a claims adjudicator has made a decision, that person may, within one year from the day the decision was issued by the claims adjudicator, seek a review of the decision by the claims services review committee.

(2) On receiving a request for a review, the Board shall cause all the information in the Board's possession in respect

8 Section 11(2) presently reads:

(2) Notwithstanding anything in this Act, the Board may, in its discretion or on the application of any interested party, by order deem any person or class of persons performing work for or for the benefit of another person to be workers of that other person for the purposes of this Act.

9 Section 40 presently reads:

40(1) On the written request of any person who has a direct interest in a claim for compensation under this Act, the Board shall cause the record of the claim to be reviewed by a claims services review committee appointed by the Board.

(2) The claims services review committee shall consist of not less than 3 persons, none of whom shall be the claims adjudicator or the physician referred to in section 37 or 38.

(3) A panel of at least 2 members of the claims services review committee may conduct a review under this section, and a decision of the panel is a decision of the committee.

(4) The claims services review committee shall receive representations on behalf of all interested parties and may confirm, vary or reverse any decision made in respect of the claim.

(5) For the purposes of a review, the claims services review committee may require the worker or his dependant, if the dependant is claiming compensation, to undergo a medical examination by a physician not employed by the Board and, in that case, section 33 applies.

of the matter that is the subject of the review to be reviewed by the claims services review committee.

(3) For the purposes of subsection (1), any decision made by a claims adjudicator prior to the coming into force of this section is deemed to have been issued on the date that this section came into force.

(4) Unless otherwise allowed by the claims services review committee, a request for a review must be in writing and must

- (a) set out the date and place of the accident and the claim number,
- (b) identify the decision or issue that is to be reviewed, and
- (c) set out the reasons as to why the decision or issue should be reviewed.

(5) The claims services review committee

- (a) must receive the representations, if any, made on behalf of any one or more of the interested parties, and
- (b) may confirm, vary or reverse any decision made in respect of the claim.

(6) For the purposes of a review, the claims services review committee may require the worker or the worker's dependant, if the dependant is claiming compensation, to undergo a medical examination by a physician not employed by the Board and, in that case, section 33 applies.

(7) The one-year period referred to in subsection (1) may be extended if the chairman of the claims services review committee or the chairman's delegate considers there is a justifiable reason for extending the time period.

(8) Where the one-year period is extended under subsection (7), the person extending the time period may do so with or without conditions.

(9) There is no appeal from a decision made under subsection (7).

10 Section 51 is amended

10 Section 51(4) and (4.1) presently read:

(a) in subsection (4) by striking out “\$40 000 or a larger amount” and substituting “an amount”;

(b) by repealing subsection (4.1) and substituting the following:

(4.1) An order referred to in subsection (4) applies only in respect of an accident that occurs on or after the day specified in the order.

11 Section 53.1 is amended by repealing subsection (2) and substituting the following:

(2) An order referred to in subsection (1) applies only to persons receiving compensation referred to in subsection (1) on the day specified in the order.

12 Section 72 is amended by striking out “in the regulations” and substituting “by an order of the board of directors of the Board”.

13 Section 74(b) is amended by striking out “by the regulations” and substituting “by an order of the board of directors of the Board”.

(4) In computing net earnings for the purposes of this Act, no regard shall be taken of the aggregate gross annual earnings of the worker in excess of \$40 000 or a larger amount prescribed by order of the Board.

(4.1) An order referred to in subsection (4)

(a) does not have any effect unless it is approved by the Lieutenant Governor in Council, and

(b) applies to workers who have the accident on or after the day specified in the order.

11 Section 53.1(1) and (2) presently read:

53.1(1) The Board may by order, for the purpose of maintaining approximate parity with the cost of living, make adjustments in the amounts payable as compensation to persons who are receiving compensation under this Act or any predecessor of this Act in respect of permanent total disability, permanent partial disability or death of a worker.

(2) An order referred to in subsection (1)

(a) does not have any effect unless it is approved by the Lieutenant Governor in Council, and

(b) applies to persons receiving compensation referred to in subsection (1) on the day specified in the order.

12 Section 72 presently reads:

72 If a worker dies as a result of an accident for which compensation is payable, the Board shall, subject to the maximum amounts prescribed in the regulations, pay

(a) a sum of money to assist in defraying costs resulting from the death of the worker, and

(b) the necessary expenses for burial or cremation, including the reasonable cost of transporting the body.

13 Section 74 presently reads:

74 The Board may

(a) assume the cost of replacement or repair of articles of clothing, dentures, eye-glasses, artificial eyes or limbs or hearing aids that are lost, damaged or destroyed as a result of an accident, regardless of the date of the accident, and

(b) on application of the worker, pay to the worker an annual amount prescribed by the regulations for the replacement of clothing that is worn or damaged

14 Section 76 is repealed and the following is substituted:

Travel
allowance, etc.

76 If, under the direction of the Board or the Appeals Commission, a worker is required to travel to a place other than the place where the worker resides, the Board may pay to the worker a travel allowance, a subsistence allowance and a wage loss allowance, or any of them, in accordance with the terms and conditions prescribed by an order of the board of directors of the Board.

15 Section 85 is amended by repealing subsections (3) and (4) and substituting the following:

(3) The Board must ensure that there is sufficient money available in the Accident Fund for the payment of present compensation and future compensation as estimated by the Board's actuary.

(4) In addition to the funds referred to in subsection (3), the Board may maintain a Rate Stabilization Reserve sufficient to meet costs arising from extraordinary events that might otherwise

(a) unfairly burden employers in the short term, or

(b) prevent full funding of the Accident Fund.

16 Section 86 is amended by repealing subsection (1) and substituting the following:

Investment of
Board funds

86(1) With respect to any funds arising under this Act or under the Board's control, the Board has exclusive authority to invest in, sell and reinvest in any securities or other investments as it considers to be expedient.

17 Section 87 is amended by repealing subsection (1) and substituting the following:

(i) *by reason of the wearing of an upper or lower limb prosthesis or appliance, or*

(ii) *by use of a wheelchair*

required as a result of an accident, regardless of the date of the accident.

14 Section 76 presently reads:

76 If, under the direction of the Board, a worker is undergoing examination or treatment at a place other than the place where he resides, the Board may pay to him a travel allowance, a subsistence allowance and a wage loss allowance, or any of them, in accordance with the regulations.

15 Section 85 presently reads:

85(1) The Accident Fund heretofore established is continued.

(2) All money received by the Board shall be paid into the Accident Fund and all expenditures of the Board shall be paid from the Accident Fund.

(3) If at any time there is not sufficient money available in the Accident Fund for the payment of compensation, the Provincial Treasurer may, with the approval of the Lieutenant Governor in Council, advance from the General Revenue Fund to the Accident Fund amounts not exceeding the amount specified in the order of the Lieutenant Governor in Council subject to any conditions specified in the order respecting the payment of interest on the amounts advanced.

(4) Any amount advanced to the Accident Fund pursuant to subsection (3) in any year, and any interest on that amount, shall be repaid by the Board to the Provincial Treasurer not later than the date specified for that purpose by the Lieutenant Governor in Council in the order under subsection (3).

16 Section 86 presently reads:

86(1) The Provincial Treasurer may, on behalf of the Board, invest any funds arising under this Act or under the control of the Board, in any securities authorized by the Financial Administration Act and may sell and dispose of those securities and reinvest the proceeds of that sale in securities.

(2) The Board may borrow from a bank, insurance company, loan corporation, trust corporation or treasury branch.

17 Section 87 presently reads:

87(1) The Auditor General is the auditor of the Board.

Auditor

87(1) Every year the Auditor General, in consultation with the Board, must appoint an independent auditor, and the Board may pay to the independent auditor the remuneration set by the Board.

18 Section 116 is repealed and the following is substituted:

Assessment
review
committee

115.1(1) The Board shall appoint an assessment review committee consisting of not fewer than 3 persons, one of whom shall be designated as the chairman of the assessment review committee.

(2) The chairman of the assessment review committee may designate one or more members of the assessment review committee to conduct a review on behalf of the assessment review committee.

(3) When one or more members of the assessment review committee are designated under subsection (2) to conduct a review, a decision made in respect of that review is a decision of the assessment review committee.

(4) Where an employee of the Board was involved in an assessment made under this Act, that person is not eligible to conduct a review in respect of that assessment.

Review of
decision

116(1) Where a person has a direct interest in an assessment made under this Act, that person may, within one year from the day that a decision was made in respect of the assessment, seek a review of the decision by the assessment review committee.

(2) On receiving a request for a review, the Board shall cause all the information in the Board's possession in respect of the matter that is the subject of the review to be reviewed by the assessment review committee.

(3) For the purposes of subsection (1), any decision that was made in respect of an assessment prior to the coming into force of this section is deemed to have been made on the date that this section came into force.

(4) Unless otherwise allowed by the assessment review committee, a request for a review must be in writing and must

(2) The Board shall, on or before May 31 in each year, make a report to the Lieutenant Governor in Council of its business and affairs during the next preceding calendar year.

(3) The report shall be forthwith laid by the Minister before the Legislative Assembly if it is then in session, and if it is not then in session, within 15 days after the opening of the next session.

(4) The Board shall have an actuarial evaluation of its liabilities made every 5 years, or in any lesser period the Lieutenant Governor in Council directs, by an independent duly qualified actuary, whose report shall be made to the Board and included in the annual report of the Board.

18 Section 116 presently reads:

116(1) On the written request of any person who has a direct interest in an assessment under this Act, the Board shall cause the circumstances relating to the assessment to be reviewed by an assessment review committee appointed by the Board.

(2) The assessment review committee shall consist of not less than 3 persons.

(3) A panel of at least 2 members of the assessment review committee may conduct a review under this section and a decision of the panel is a decision of the committee.

(4) The assessment review committee shall receive representations on behalf of all interested parties and may confirm, vary or reverse any decision made in respect of the assessment.

- (a) set out the date that the decision that is to be reviewed was made,
- (b) identify the decision or issue that is to be reviewed, and
- (c) set out the reasons as to why the decision or issue should be reviewed.

(5) The assessment review committee

- (a) must receive the representations, if any, made on behalf of any one or more of the interested parties, and
- (b) may confirm, vary or reverse the decision.

(6) The one-year period referred to in subsection (1) may be extended if the chairman of the assessment review committee or the chairman's delegate considers there is a justifiable reason for extending the time period.

(7) Where the one-year period is extended under subsection (6), the person extending the time period may do so with or without conditions.

(8) There is no appeal from a decision made under subsection (6).

19 The following is added after section 131.1:

Programs

131.2(1) For the purposes of the prevention of accidents and of minimizing the effect of work-related injuries on workers and employers, the Board may establish, fund and carry out programs directed at injury prevention and injury management in the workplace.

(2) The Board may authorize, take measures for and provide for the funding of any program or service that in the opinion of the Board

- (a) is a benefit to workers or employers, or
- (b) otherwise promotes the operations of the Board,

including undertaking or supporting research in matters relating to its responsibilities under this Act.

19 Operation of programs.

20 Section 142 is amended by renumbering it as section 142(1) and by adding the following after subsection (1):

(2) With respect to any information or material obtained, received or produced by a person in the performance of that person's duties under this Act, neither

- (a) a member of the board of directors of the Board,
- (b) an employee of the Board,
- (c) an appeals commissioner, nor
- (d) an employee of the Appeals Commission

shall be required to give evidence in a civil suit or proceeding to which the Board or the Appeals Commission is not named as a party.

(3) Nothing in subsection (2) shall be construed so as to affect the powers of the Board or the Appeals Commission under section 12(5) and (6) or the powers, privileges or immunities of the Board under section 15.

21 Section 147(1) is amended by repealing clauses (e) and (m).

22 The following is added after section 149:

Financial
Administration
Act

149.1(1) Except for sections 6, 77(2) and 80.1 of the *Financial Administration Act*, the *Financial Administration Act* does not apply to the Board, the Appeals Commission or the Accident Fund.

(2) The Lieutenant Governor in Council, on the advice of the Treasury Board, may make regulations and issue directives that it considers necessary in connection with the exercise or performance of the Treasury Board's powers and duties under the *Financial Administration Act* or any other Act with respect to the Board, the Appeals Commission and the Accident Fund.

20 Section 142 presently reads:

142 The books, records, documents and files of the Board and all reports, statements and other documents filed with the Board or provided to it are privileged and are not admissible in evidence in any action or proceeding without the consent of the Board.

21 Section 147(1)(e) and (m) presently read:

147(1) The Lieutenant Governor in Council may make regulations

(e) prescribing amounts payable and the conditions of eligibility for travel allowance, subsistence allowance and wage loss allowance under section 76;

(m) prescribing the amounts payable under sections 72 and 74;

22 Section 149.1 governs the application of the Financial Administration Act. Section 149.2 provides for the date on which a Board order comes into effect.

Effective date
of a Board
order

149.2 Unless otherwise specified in this or another enactment, any order that the Board is empowered to make under this Act takes effect on the date named in the order as the effective date and, where the Board in its discretion considers it appropriate to do so, the order may be made to take effect on a date that is prior to the date on which the order is made.

23 This Act comes into force on Proclamation.

23 Coming into force.