

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 589

H. P. 523

House of Representatives, February 3, 1981

Submitted by the Workers' Compensation Commission pursuant to Joint Rule 24.

Referred to the Committee on Labor. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Beaulieu of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Improve the Administration of Workers' Compensation Hearings and Appeals.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 39 MRSA § 96 is repealed.

Sec. 2. 39 MRSA § 96-A is enacted to read:

§ 96-A. Procedure for filing petitions

1. Service upon responding party. Any interested party may seek a determination of his rights under this section by mailing by certified mail, return receipt requested, any petition authorized under this section to the other parties named in the petition.

2. Filing with the commission. Copies of all petitions served under subsection 1 shall be filed with the commission. The time for filing of answers to petitions commences from the date of receipt of the petition by the answering parties or by the commission, which determination shall be made by a single commissioner at the time of hearing.

Sec. 3. 39 MRSA § 97, first sentence, as amended by PL 1977, c. 437, § 5, is further amended to read:

Within ~~20~~ 30 days after ~~notice of the filing~~ receipt of such petition all the other parties interested in opposition shall file an answer thereto **with the commission and furnish mail** a copy thereof ~~for~~ to the petitioner, which answer shall state specifically the contentions of the opponents with reference to the claim as disclosed by the petition.

Sec. 4. 39 MRSA § 99, 2nd ¶, first sentence, as enacted by PL 1977, c. 632, § 2, is amended to read:

The commissioner shall, upon the request of a party made as a motion within ~~40~~ 20 days after notice of the decision, or may upon its own motion find the facts specially and state separately its conclusions of law thereon and file the appropriate decision if it differs from the decision filed before the request was made.

Sec. 5. 39 MRSA § 99, as last amended by PL 1979, c. 713, § 1, is further amended by adding after the 2nd paragraph a new paragraph to read:

Clerical mistakes in decrees, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the commission at any time of its own initiative or on the motion of any party and after notice to the parties. During the pendency of an appeal, these mistakes may be so corrected before the appeal is docketed in the Superior Court or Supreme Judicial Court and thereafter while the appeal is pending may be so corrected with leave of the Superior Court or Supreme Judicial Court.

Sec. 6. 39 MRSA § 99-A, as enacted by PL 1977, c. 199, is repealed.

Sec. 7. 39 MRSA § 103, as last amended by PL 1979, c. 132, § 1, is repealed and the following enacted in its place:

§ 103. Appeal

1. Grounds for review. Where the commissioner has made an award or denial of compensation or any order, any party in interest may, if he acts within 30 days from the date of receipt of notice of the order, have the order reviewed by the Supreme Judicial Court upon one of the following grounds:

- A. The decree does not conform with this section;**
- B. The workers' compensation commissioner committed any other error of law; or**
- C. The findings of fact and order were unwarranted by the evidence.**

2. Procedure for review. Within the 30-day period referred to in subsection 1, the party seeking review shall file a notice of appeal with the clerk of the commission indicating that a review is to be had in the Supreme Judicial Court of the order of the commission.

3. Jurisdiction vested. The commission decree or order shall have the same effect and all proceedings in relation thereto shall thereafter be the same as

though rendered in an action in which equitable relief is sought, duly heard and determined by the Superior Court. When the notice of appeal has been filed with the commission the clerk of the commission shall immediately transmit to the clerk of the Supreme Judicial Court the notice of appeal. Filing of the notice of appeal vests the Supreme Judicial Court with jurisdiction of the case. Within 30 days after the filing of the notice of appeal with the commission the clerk of the commission shall transmit to the clerk of the Supreme Judicial Court a copy of the decree or order appealed from, together with all papers in connection with it. The Supreme Judicial Court may affirm, suspend, remand, modify or set aside, in whole or in part, a commission order or decision. The Maine Rules of Civil Procedure, as they apply to an appeal from the Superior Court, shall apply to a commission order or decision except as otherwise provided in this section.

STATEMENT OF FACT

The purposes of this bill are the following.

Secs. 1 & 2. This bill removes the commission from the present service of petitions triangle and enables the petitioning party to notify the opposition directly. the procedure, as it presently exists, assumes the worker's inability to comprehend a simplified legal system. It ignores what has been Maine law since 1965, that any employee who institutes proceedings on reasonable grounds and in good faith is entitled to reasonable attorney's fees. The purpose of the amendment is fourfold. It enables the petitioning party to directly notify the opposing party without having to await any commission action. It recognizes that only a negligible number of claims are presently filed pro se. It removes the commission from the business of simply forwarding petitions to opposing parties based upon information obtained from the petition itself. It reduces the time between petition and the first date of hearing.

Sec. 3. This bill brings this section into conformity with the legislation changing service and filing of petitions.

Sec. 4. Decrees are sent only to the parties' attorneys. The present 10-day rule often does not provide the attorney sufficient time to digest the commission decision, confer with his client and decide whether to pursue an appeal, move for findings or accept the decision. This extension of time provides a more reasonable time frame without adverse effect to the prevailing party. The added time to analyze the status of a claim should also reduce present motions filed only to obtain an automatic time extension for client consultation.

Sec. 7. The primary purpose of this legislation is to abolish the present requirement that an appealing party obtain a pro forma decree in Superior Court. This direct appeal simplifies the present cumbersome procedure which lends itself to confusion, error and occasional dismissal for failing to satisfy all of the procedural hurdles in the existing section. The scope of judicial review of a commission order or decree is unchanged by this amendment. The proposed 30-

day period provides the party contemplating an appeal with an additional 10 days in which to make a decision. The direct appeal would allow the appeal to reach the Supreme Judicial Court in substantially less time than the present section allows.