

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

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Legislative Document

No. 1416

S.P. 494

March 15, 2007

An Act To Create a Workers' Compensation Board Appeals Process

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.
Cosponsored by Representative JACKSON of Allagash and Representatives: CLARK of
Millinocket, JOY of Crystal, TUTTLE of Sanford.

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

2 **Sec. 1. 39-A MRSA §102, sub-§2-A** is enacted to read:

3 2-A. Appeal board. "Appeal board" means the board when acting to hear and
4 decide an appeal of a hearing officer's decision as provided in section 320-A.

5 **Sec. 2. 39-A MRSA §102, sub-§12-B** is enacted to read:

6 12-B. Hearing officer. "Hearing officer" means an individual employed by the
7 board to hold a hearing as provided in this Part.

8 **Sec. 3. 39-A MRSA §152, sub-§15** is enacted to read:

9 15. Appeal board. The board shall serve as the appeal board to hear and decide an
10 appeal of a decision made by a hearing officer as provided in section 320-A. An appeal
11 decision must be determined by majority vote of the appeal board.

12 **Sec. 4. 39-A MRSA §213, sub-§1**, as amended by PL 2003, c. 52, §1, is further
13 amended to read:

14 **1. Benefit and duration.** While the incapacity for work is partial, the employer
15 shall pay the injured employee a weekly compensation equal to 80% of the difference
16 between the injured employee's after-tax average weekly wage before the personal injury
17 and the after-tax average weekly wage that the injured employee is able to earn after the
18 injury, but not more than the maximum benefit under section 211. Compensation must be
19 paid for the duration of the disability if the employee's permanent impairment,
20 determined according to subsection 1-A and the impairment guidelines adopted by the
21 board pursuant to section 153, subsection 8 resulting from the personal injury is in excess
22 of 15% to the body. In all other cases an employee is not eligible to receive
23 compensation under this section after the employee has received 260 weeks of
24 compensation under section 212, subsection 1, this section or both. The board may in the
25 exercise of its discretion extend the duration of benefit entitlement beyond 260 weeks in
26 cases involving extreme financial hardship due to inability to return to gainful
27 employment. This authority may be delegated by the board, on a case-by-case basis, to a
28 hearing officer or a panel of 3 hearing officers. Decisions made under this subsection
29 must be made expeditiously. A decision under this subsection made by a hearing officer
30 or a panel of 3 hearing officers may ~~not~~ be appealed to the board, servng as the appeal
31 board, under section 320, but may be appealed pursuant to section 322 320-A.

32 **Sec. 5. 39-A MRSA §320**, as amended by PL 2005, c. 25, §1, is repealed.

33 **Sec. 6. 39-A MRSA §320-A** is enacted to read:

34 **§320-A. Appeal to appeal board**

35 1. Appeal. If a party is not satisfied with the final decision of the hearing officer
36 pursuant to section 318, the party may appeal the decision to the appeal board. The
37 appeal must be submitted within 30 days after receipt of notice of the filing of the

1 decision by the hearing officer, although the appeal board may extend the time limit for
2 good cause. If no appeal is submitted, the hearing officer may request that the appeal
3 board review a decision of the hearing officer if the decision involves an issue that is of
4 significance to the operation of the workers' compensation system. The request must be
5 made within 45 days of the issuance of the hearing officer's decision and may be
6 accepted by majority vote of a quorum of the appeal board within 60 days after receiving
7 the request for review.

8 **2. Judicial appeal.** Any appeal pursuant to section 322 must be from the decision of
9 the appeal board.

10 **3. Appeal on record and appeal documents.** In considering an appeal, the appeal
11 board, except as otherwise provided in this section, shall consider only the record of the
12 proceedings before the hearing officer, including any documents or testimony presented
13 to the hearing officer. The appeal board may also consider any oral or written arguments
14 that a party may wish to make in support of or opposition to the appeal.

15 **4. Standard of review.** The appeal board may overrule a decision of the hearing
16 officer only if the appeal board determines the decision is arbitrary and capricious,
17 inconsistent with statute or inconsistent with the policies adopted by the board.

18 **5. New information.** If a party wishes to offer on appeal new information not
19 presented to the hearing officer, the appeal board shall determine whether the new
20 information is appropriate for consideration in connection with the case. If the appeal
21 board determines that the new information is appropriate for consideration, it shall return
22 the matter to the hearing officer and order that the hearing officer reconsider the case in
23 light of the new information.

24 **6. Decision.** Upon a vote of a majority of the appeal board, the appeal board shall
25 issue a written decision affirming, reversing or modifying the hearing officer's decision.
26 The written decision of the appeal board must be filed with the board and mailed to the
27 parties or their counsel. The appeal board shall complete its decision within 60 days of
28 the filing of the appeal or request with the appeal board. The decision of the appeal board
29 is appealable to the Law Court as provided in section 322.

30 **Sec. 7. 39-A MRSA §322,** as enacted by PL 1991, c. 885, Pt. A, §8 and as
31 affected by §§9 to 11, is amended to read:

32 **§322. Appeal from decision of appeal board**

33 **1. Appeals.** Any party in interest may present a copy of the decision of ~~a hearing~~
34 ~~officer or a decision of the appeal~~ board, ~~if the board has reviewed a decision~~ pursuant to
35 section ~~320~~ 320-A, to the clerk of the Law Court within 20 days after receipt of notice of
36 the filing of the decision by the ~~hearing officer or the appeal~~ board. Within 20 days after
37 the copy is filed with the Law Court, the party seeking review by the Law Court shall file
38 a petition seeking appellate review with the Law Court that sets forth a brief statement of
39 the facts, the error or errors of law that are alleged to exist and the legal authority
40 supporting the position of the appellant.

