

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1953

5 By: Representative Collins
6 By: Senator J. Hendren
7

For An Act To Be Entitled

9 AN ACT TO AMEND CERTAIN PROVISIONS OF THE WORKERS'
10 COMPENSATION LAW THAT RESULTED FROM INITIATED ACT NO.
11 4 OF 1948; TO AMEND THE DEFINITION OF OBJECTIVE
12 FINDINGS ENACTED BY INITIATED ACT NO. 4 OF 1948; TO
13 REVISE THIRD-PARTY LIABILITY IN THE WORKERS'
14 COMPENSATION LAW; TO RESTORE CONSISTENCY IN TEMPORARY
15 TOTAL DISABILITY BENEFIT AND EMPLOYEE MISCONDUCT
16 DETERMINATIONS AFTER TERMINATION UNDER INITIATED ACT
17 NO. 4 OF 1948; AND FOR OTHER PURPOSES.
18

Subtitle

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21 TO AMEND CERTAIN PROVISIONS OF THE
22 WORKERS' COMPENSATION LAW THAT RESULTED
23 FROM INITIATED ACT NO. 4 OF 1948.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. DO NOT CODIFY. Legislative intent.

29 The purpose and intent of this act is to reverse specifically any case
30 law providing that former employees who are properly terminated for
31 misconduct are entitled to temporary total or temporary partial disability
32 benefits if the employer has work available within the former employee's
33 restrictions, including without limitation, Tyson Poultry, Inc. v. Narvaiz,
34 2012 Ark. 118 (2012); and Superior Industries v. Thomaston, 72 Ark. App. 7,
35 32 S.W.3d 52 (2000).
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1 SECTION 2. Arkansas Code § 11-9-102(16), concerning the definition of
2 "objective findings" under the Workers' Compensation Law, is amended to add
3 an additional subdivision to read as follows:

4 (C)(1) For muscle spasms to constitute an objective
5 finding of injury, a specific diagnosis of palpable muscle spasms is
6 necessary.

7 (2) The presence of muscle spasms may not be
8 inferred from diagnosis or treatment that involves a prescription for a type
9 of muscle relaxant in the absence of objective findings.

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11 SECTION 3. Arkansas Code § 11-9-410(a)(2)(D), concerning the rights of
12 an employer in a claim for recovery by an injured employee against a third
13 party, is amended to read as follows:

14 (D)(i) Any excess amount of a settlement or judgment
15 remaining after the employer or the carrier has been reimbursed the amount
16 paid in workers' compensation benefits arising from an injury or death shall
17 belong to the injured employee or his or her dependents.

18 (ii) An employer or carrier is entitled to a future
19 credit in the claim for workers' compensation benefits in the amount paid to
20 or on behalf of the injured or deceased employee or his or her dependents
21 from the settlement or judgment in this subdivision (a)(2).

22 (iii) An employer or carrier is not required to pay
23 additional workers' compensation benefits for the injuries or death arising
24 from an incident involving a third party until the future credit is
25 exhausted.

26
27 SECTION 4. Arkansas Code § 11-9-410(b)(2), concerning subrogation in a
28 third-party claim, is amended to read as follows:

29 (2) After reasonable notice and opportunity to be represented in
30 the action has been given to the compensation beneficiary, the liability of
31 the third party to the compensation beneficiary, to the employer, and to the
32 carrier shall be determined in the action, as well as the third party's
33 liability to the employer and carrier.

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35 SECTION 5. Arkansas Code § 11-9-410(b)(3)(A), concerning recovery
36 amounts from a third-party liability action, is amended to read as follows:

1 (3)(A) After recovery shall be had against the third party, by
2 suit or otherwise, the compensation beneficiary ~~shall be~~ is entitled to any
3 amount recovered over and above the amount that the employer and carrier have
4 paid or are liable for in compensation, after deducting reasonable costs of
5 collection except that:

6 (i) An employer or carrier is entitled to a future
7 credit in a claim for workers' compensation benefits in the amount of a
8 settlement or judgment to be paid to or on behalf of the injured or deceased
9 employee or his or her dependents from a third party after the employer or
10 carrier has been reimbursed the amount paid to or on behalf of the injured or
11 deceased employee or his or her dependents; and

12 (ii) An employer or carrier is not required to pay
13 additional workers' compensation benefits for the injuries or death arising
14 from an incident involving a third party until the future credit is
15 exhausted.

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17 SECTION 6. Arkansas Code § 11-9-410, concerning third-party liability,
18 is amended to add additional subsections to read as follows:

19 (d) Waiver or Abrogation of Subrogation.

20 (1) The right of an employer or carrier to recover in an action
21 in tort from a third party that caused the injury or death of an employee is
22 absolute and may only be waived with the written consent of the employer or
23 carrier.

24 (2) The written consent of the employer of an injured employee
25 or the carrier of the employer is required in any settlement of an action in
26 tort against a third party outside of this section.

27 (e) The purpose and intent of this subsection is to prevent any double
28 recovery to the injured employee.

29 (f) In considering the entitlement of an employer or carrier to an
30 absolute lien in any third party claim, the commission or court shall not
31 consider the "made whole doctrine" or whether the claimant has been made
32 whole by the settlement proceeds.

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34 SECTION 7. Arkansas Code § 11-9-521(a), concerning worker's
35 compensation for scheduled permanent injuries under the Workers' Compensation
36 Law, is amended to read as follows:

~~(a) An employee who sustains a permanent compensable injury scheduled in this section shall receive, in addition to compensation for temporary total and temporary partial benefits during the healing period or until the employee returns to work, whichever occurs first, weekly benefits in the amount of the permanent partial disability rate attributable to the injury, for that period of time set out in the following schedule~~

(a)(1) An employee who sustains a compensable injury scheduled in this section may be entitled to temporary total disability benefits or temporary partial disability benefits, or both, during the healing period if the employer does not offer work within the employee's medical restrictions arising from the injury.

(2)(A) When an employee is terminated for misconduct and the employer has work available within the former employee's medical restrictions from the workers' compensation injury, the former employee is not entitled to temporary total or temporary partial disability benefits during the healing period in which the misconduct occurred.

(B) For purposes of subdivision (a)(2)(A) of this section, the employer has the burden of proof by a preponderance of the evidence.

(3) An employee who sustains a permanent compensable injury scheduled in this section is entitled to weekly benefits in the amount of the permanent partial disability rate attributable to the injury for the time set out in the following schedule:

~~(1)(A)~~ Arm amputated at the elbow, or between the elbow and shoulder, two hundred forty-four (244) weeks;

~~(2)(B)~~ Arm amputated between the elbow and wrist, one hundred eighty-three (183) weeks;

~~(3)(C)~~ Leg amputated at the knee, or between the knee and the hip, one hundred eighty-four (184) weeks;

~~(4)(D)~~ Leg amputated between the knee and the ankle, one hundred thirty-one (131) weeks;

~~(5)(E)~~ Hand amputated, one hundred eighty-three (183) weeks;

~~(6)(F)~~ Thumb amputated, seventy-three (73) weeks;

~~(7)(G)~~ First finger amputated, forty-three (43) weeks;

~~(8)(H)~~ Second finger amputated, thirty-seven (37) weeks;

~~(9)(I)~~ Third finger amputated, twenty-four (24) weeks;

- 1 ~~(10)~~(J) Fourth finger amputated, nineteen (19) weeks;
- 2 ~~(11)~~(K) Foot amputated, one hundred thirty-one (131)
- 3 weeks;
- 4 ~~(12)~~(L) Great toe amputated, thirty-two (32) weeks;
- 5 ~~(13)~~(M) Toe other than great toe amputated, eleven (11)
- 6 weeks;
- 7 ~~(14)~~(N) Eye enucleated, in which there was useful vision,
- 8 one hundred five (105) weeks;
- 9 ~~(15)~~(O) Loss of hearing of one (1) ear, forty-two (42)
- 10 weeks;
- 11 ~~(16)~~(P) Loss of hearing of both ears, one hundred fifty-
- 12 eight (158) weeks; and
- 13 ~~(17)~~(Q) Loss of one (1) testicle, fifty-three (53) weeks;
- 14 loss of both testicles, one hundred fifty-eight (158) weeks.

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16 SECTION 8. Arkansas Code § 11-9-526 is amended to read as follows:

17 11-9-526. Compensation for disability – Refusal of employee to accept
18 employment – Termination for misconduct.

19 ~~(a) If any injured employee refuses employment suitable to his or her~~
20 ~~capacity offered to or procured for him or her, he or she shall not be~~
21 ~~entitled to any compensation during the continuance of the refusal, unless in~~
22 ~~the opinion of the Workers' Compensation Commission, the refusal is~~
23 ~~justifiable~~ If an injured employee refuses employment suitable to his or her
24 capacity offered to or procured for him or her, the injured employee is not
25 entitled to compensation during the continuance of the refusal unless, in the
26 opinion of the Workers' Compensation Commission, the refusal is justifiable.

27 (b)(1) When an employee is terminated for misconduct and the employer
28 has work available within the former employee's medical restrictions from the
29 workers' compensation injury, the former employee is not entitled to
30 temporary total or temporary partial disability benefits.

31 (2) For purposes of subdivision (b)(1) of this section, the
32 employer has the burden of proof by a preponderance of the evidence.

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