

104TH CONGRESS
2D SESSION

H. R. 3205

To change the appeals process in the workers' compensation provisions of title 5, United States Code.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1996

Mr. BILBRAY (for himself and Ms. DUNN of Washington introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

A BILL

To change the appeals process in the workers' compensation provisions of title 5, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. APPEALS PROCESS.**

4 (a) REFERENCE.—Whenever in this section an
5 amendment or repeal is expressed in terms of an amend-
6 ment to, or repeal of, a section or other provision, the ref-
7 erence shall be considered to be made to a section or other
8 provision of title 5, United States Code.

9 (b) TIME PERIOD FOR DECISION.—Section 8118 is
10 amended by adding at the end the following:

1 “(f) An initial decision by the Secretary of Labor
2 shall be made within 90 days of the date the claim is filed
3 by the employee. If an initial decision is not made within
4 such 90 days, the claimant shall be authorized further
5 payment of full and normal salary until at such time an
6 initial decision is reached. An employer may not hold or
7 delay the filing of the claim. An agency may not withhold
8 the filing of a claim, deny forms to file a claim, or ob-
9 struct, threaten, or induce a claimant to forego filing a
10 claim. An agent of an agency may not falsify, induce, or
11 compel false testimony to deny or controvert a claim.”.

12 (c) CLAIMANT’S PHYSICIAN.—Section 8123(a) is
13 amended to read as follows:

14 “(a) An employee shall submit to an actual physical
15 examination by a physician designated or approved by the
16 Secretary of Labor, when so ordered by the administrative
17 law judge. In cases of surgery, a second opinion examina-
18 tion shall be required before such surgery, except in life
19 threatening circumstances or where additional disability
20 will result if there is a delay. A medical report from a
21 treating physician is predominant and sufficient for a case
22 unless there are serious and legal reasons to suspect the
23 medical evidence. Legal and medical examinations and re-
24 ports, ordered by administrative law judges, will only be
25 required where there are legal questions to be resolved

1 with regard to the nature of the injury or with regard to
2 whether the event that caused the injury was work-related
3 or work-caused. The claimant shall have the right to have
4 the claimant's own physician or a witness or representa-
5 tive present during the exam. The employee may have a
6 physician designated and paid by the employee present to
7 participate in the examination. If there is any disagree-
8 ment between the physician for the Secretary and the
9 claimant's physician, a list of 3 physicians of the appro-
10 priate Board Certified Specialty shall be tendered to the
11 claimant who shall choose the physician to conduct the
12 final examination with respect to the medical and legal
13 issues in disagreement. The Secretary shall provide the
14 claimant's physician with the same opportunity and infor-
15 mation as is provided to the physician acting for the Sec-
16 retary, including the statement of accepted facts and all
17 medical information in the claimant's file.”.

18 (d) PHYSICIAN FEES.—Section 8123(c) is amended
19 to read as follows:

20 “(c) The Secretary shall fix the fees for physicians
21 under this section such that the physicians representing
22 the Secretary shall be limited to the same structure and
23 amounts allowed to claimants' physicians. All medical bills
24 shall be paid within 60 days of billing, except during the

1 initial claims processing, and in that case they shall be
2 paid within 60 days of acceptance of the claim.”.

3 (e) HEARING DATE.—Section 8124(b)(1) is amended
4 to read as follows:

5 “(b)(1) Administrative review of an initial decision of
6 which the claimant is not satisfied may be appealed for
7 an oral hearing before the administrative law judges of
8 the Department of Labor. A request for an oral hearing
9 must be made within 180 days of the date of the initial
10 decision being appealed. A hearing must be held within
11 90 days of the date requested, or compensation denied or
12 reduced shall be reinstated until such time as the hearing
13 is given and a decision reached. Decisions regarding the
14 issues brought on appeal shall be rendered within 30 days
15 of the hearing or benefits will be reinstated if denied or
16 reduced until a decision is reached.”.

17 (f) CLAIMANT’S AUTHORITY.—Section 8124(b)(2) is
18 amended to read as follows:

19 “(2) In conducting the hearing, the Secretary shall
20 follow the requirements of chapter 5. The claimant shall
21 have the right to confront and cross examine all adverse
22 witnesses and present such evidence as the claimant feels
23 necessary for consideration of the claim. The claimant’s
24 employer shall not be present at the hearing but shall be

1 provided an opportunity to comment on the transcript of
2 the hearing.”.

3 (g) REPRESENTATION; REPRESENTATIVE FEES.—

4 Section 8127 is amended by adding at the end the follow-
5 ing:

6 “(c) Except as provided in subsection (d), claimant’s
7 attorney or representative shall be entitled to receive a fee
8 of 15 percent of the benefits awarded to the claimant.

9 “(d) If the claimant prevails in a decision of a Fed-
10 eral court under chapter 7, the claimant’s attorney shall
11 be paid by the Secretary, but not from the claimant’s
12 award for the work of such attorney if the position of the
13 Secretary with respect to such claimant was found under
14 section 2412(c) of title 28 to be not substantially justi-
15 fied.”.

16 (h) REVIEW OF AWARD.—Section 8128 is amended
17 by striking subsections (a) and (b) and insert the follow-
18 ing:

19 “Once a claim for compensation has been accepted,
20 the Secretary may only end, decrease, or increase com-
21 pensation by meeting a burden of proof standard that
22 there was sufficient cause to perform a review. The claim-
23 ant shall have the right to petition for review of adverse
24 decisions at any time upon the submission of a new legal
25 argument or new factual evidence not previously consid-

1 ered. Any denial of a petition for review or adverse deci-
2 sion arising out of a petition for review shall be reviewable
3 under section 8124. Decisions on petitions for review shall
4 be rendered no later than 90 days from the date received
5 by the Secretary or his designee.”.

6 (i) REEMPLOYMENT AND VOCATIONAL REHABILITA-
7 TION.—(1) Section 8104 is amended to read as follows:

8 **“§8104. Reemployment and vocational rehabilitation**

9 “(a) The Secretary of Labor shall provide vocational
10 rehabilitation services to any permanently disabled claim-
11 ant who requests or whose physician requests such serv-
12 ices. The claimant shall choose the vocational service pro-
13 vider, and insofar as practicable use the State services al-
14 ready funded by the Secretary of Health and Human Serv-
15 ices. If a private counselor is used, the claimant shall have
16 sole right to pick the provider and the fees shall be paid
17 out of the Employees’ Compensation Fund.

18 “(b) Federal employers shall give first priority of
19 placement to injured Federal workers in positions com-
20 mensurate with their pay at time of injury and disability.
21 Such positions include any positions for which the claim-
22 ant may already have experience or ones that they can
23 be trained in. No person may retaliate, punish, deny work,
24 deny promotion, or carry out any other discriminatory act
25 against a claimant for filing a claim for compensation.”.

1 (2) The table of sections for chapter 81 of title 5,
2 United States Code, is amended by striking the item relat-
3 ing to section 8104 and inserting the following:

“8104. Reemployment and vocational rehabilitation.”.

