

Amendment No. 278

Assembly Amendment to Assembly Bill No. 281

(BDR 53-57)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

AAK/WLK



Date: 4/18/2009

A.B. No. 281—Makes various changes concerning workers' compensation.
(BDR 53-57)



ASSEMBLY BILL NO. 281—ASSEMBLYMAN CONKLIN

MARCH 10, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning workers' compensation.
(BDR 53-57)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to industrial insurance; creating an expedited appeals process for certain claims by police officers, firefighters and emergency medical attendants; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1 and 2 of this bill authorize certain contested claims relating to certain occupational diseases of police officers, firefighters and emergency medical attendants to be submitted directly to an appeals officer, thereby bypassing the hearing officer to whom the contested claim would need to be submitted under existing law. (NRS 616C.315) **Section 2** also requires that the appeals officer set a hearing date within ~~30~~ **60** days after receiving a notice of any such contested claim. (NRS 616C.345) **Section 3** of this bill requires that the appeals officer render a decision for any such contested claim within 15 days after certain specified events. (NRS 616C.360)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 616C.315 is hereby amended to read as follows:

616C.315 1. Any person who is subject to the jurisdiction of the hearing officers pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may request a hearing before a hearing officer of any matter within the hearing officer's authority. The insurer shall provide, without cost, the forms necessary to request a hearing to any person who requests them.

2. A hearing must not be scheduled until the following information is provided to the hearing officer:

(a) The name of:

- (1) The claimant;
 - (2) The employer; and
 - (3) The insurer or third-party administrator;
- (b) The number of the claim; and

(c) If applicable, a copy of the letter of determination being appealed or, if such a copy is unavailable, the date of the determination and the issues stated in the determination.

3. Except as otherwise provided in NRS 616B.772, 616B.775, 616B.787, 616C.305 and 616C.427, a person who is aggrieved by:

(a) A written determination of an insurer; or

(b) The failure of an insurer to respond within 30 days to a written request mailed to the insurer by the person who is aggrieved,

may appeal from the determination or failure to respond by filing a request for a hearing before a hearing officer. Such a request must include the information required pursuant to subsection 2 and, except as otherwise provided in subsections 4 and 5, must be filed within 70 days after the date on which the notice of the insurer's determination was mailed by the insurer or the unanswered written request was mailed to the insurer, as applicable. The failure of an insurer to respond to a written request for a determination within 30 days after receipt of such a request shall be deemed by the hearing officer to be a denial of the request.

4. The period specified in subsection 3 within which a request for a hearing must be filed may be extended for an additional 90 days if the person aggrieved shows by a preponderance of the evidence that he was diagnosed with a terminal illness or was informed of the death or diagnosis of a terminal illness of his spouse, parent or child.

5. Failure to file a request for a hearing within the period specified in subsection 3 may be excused if the person aggrieved shows by a preponderance of the evidence that he did not receive the notice of the determination and the forms necessary to request a hearing. The claimant or employer shall notify the insurer of a change of address.

6. The hearing before the hearing officer must be conducted as expeditiously and informally as is practicable.

7. The parties to a contested claim may, if the claimant is represented by legal counsel, agree to forego a hearing before a hearing officer and submit the contested claim directly to an appeals officer.

8. A claimant may, with regard to a contested claim arising from the provisions of NRS 617.453, 617.455, 617.457, 617.485 or 617.487 as described in subsection 2 of NRS 616C.345, submit the contested claim directly to an appeals officer pursuant to subsection 2 of NRS 616C.345 without the agreement of any other party.

Sec. 2. NRS 616C.345 is hereby amended to read as follows:

616C.345 1. Any party aggrieved by a decision of the hearing officer relating to a claim for compensation may appeal from the decision by, except as otherwise provided in subsections ~~8 and 9,~~ 9 and 10, filing a notice of appeal with an appeals officer within 30 days after the date of the decision.

2. A claimant aggrieved by a written determination of the denial of a claim, in whole or in part, by an insurer, or the failure of an insurer to respond in writing within 30 days to a written request of the claimant mailed to the insurer, concerning a claim arising from the provisions of NRS 617.453, 617.455, 617.457, 617.485 or 617.487 may file a notice of a contested claim with an appeals officer. The notice must include the information required pursuant to subsection 3 and, except as otherwise provided in subsections 9 and 11, must be filed within 70 days after the date on which the notice of the insurer's determination was mailed by the insurer or the unanswered written request was mailed to the insurer, as applicable. The failure of an insurer to respond in writing to a written request for a determination within 30 days after receipt of such a request shall be deemed by the appeals officer to be a denial of the

1 *request. The insurer shall provide, without cost, the forms necessary to file a*
2 *notice of a contested claim to any person who requests them.*

3 3. A hearing must not be scheduled until the following information is
4 provided to the appeals officer:

5 (a) The name of:

6 (1) The claimant;

7 (2) The employer; and

8 (3) The insurer or third-party administrator;

9 (b) The number of the claim; and

10 (c) If applicable, a copy of the letter of determination being appealed or, if such
11 a copy is unavailable, the date of the determination and the issues stated in the
12 determination.

13 ~~[3-]~~ 4. If a dispute is required to be submitted to a procedure for resolving
14 complaints pursuant to NRS 616C.305 and:

15 (a) A final determination was rendered pursuant to that procedure; or

16 (b) The dispute was not resolved pursuant to that procedure within 14 days
17 after it was submitted,

18 ~~↪~~ any party to the dispute may, except as otherwise provided in subsections ~~[8 and~~
19 ~~9-]~~ 9 and 10, file a notice of appeal within 70 days after the date on which the final
20 determination was mailed to the employee, or his dependent, or the unanswered
21 request for resolution was submitted. Failure to render a written determination
22 within 30 days after receipt of such a request shall be deemed by the appeals officer
23 to be a denial of the request.

24 ~~[4-]~~ 5. Except as otherwise provided in NRS 616C.380, the filing of a notice
25 of appeal does not automatically stay the enforcement of the decision of a hearing
26 officer or a determination rendered pursuant to NRS 616C.305. The appeals officer
27 may order a stay, when appropriate, upon the application of a party. If such an
28 application is submitted, the decision is automatically stayed until a determination
29 is made concerning the application. A determination on the application must be
30 made within 30 days after the filing of the application. If a stay is not granted by the
31 officer after reviewing the application, the decision must be complied with within
32 10 days after the date of the refusal to grant a stay.

33 ~~[5-]~~ 6. Except as otherwise provided in subsections ~~[2 and 6-]~~ 3 and 7, within
34 10 days after receiving a notice of appeal pursuant to this section or NRS 616C.220,
35 616D.140 or 617.401, or within 10 days after receiving a notice of a contested
36 claim pursuant to subsection 7 of NRS 616C.315, the appeals officer shall:

37 (a) Schedule a hearing on the merits of the appeal or contested claim for a date
38 and time within 90 days after his receipt of the notice at a place in Carson City,
39 Nevada, or Las Vegas, Nevada, or upon agreement of one or more of the parties to
40 pay all additional costs directly related to an alternative location, at any other place
41 of convenience to the parties, at the discretion of the appeals officer; and

42 (b) Give notice by mail or by personal service to all parties to the matter and
43 their attorneys or agents at least 30 days before the date and time scheduled.

44 ~~[6.- A-]~~

45 7. *Except as otherwise provided in subsection 12, a request to schedule the*
46 *hearing for a date and time which is:*

47 (a) Within 60 days after the receipt of the notice of appeal or contested claim;
48 or

49 (b) More than 90 days after the receipt of the notice or claim,

50 ~~↪~~ may be submitted to the appeals officer only if all parties to the appeal or
51 contested claim agree to the request.

52 ~~[7.- A-]~~

1 8. ~~Except as otherwise provided in subsection 12, an~~ An appeal or
2 contested claim may be continued upon written stipulation of all parties, or upon
3 good cause shown.

4 ~~8.9~~ 9. The period specified in subsection 1, 2 or ~~4~~ 4 within which a notice
5 of appeal or a notice of a contested claim must be filed may be extended for an
6 additional 90 days if the person aggrieved shows by a preponderance of the
7 evidence that he was diagnosed with a terminal illness or was informed of the death
8 or diagnosis of a terminal illness of his spouse, parent or child.

9 ~~9.9~~ 10. Failure to file a notice of appeal within the period specified in
10 subsection 1 or ~~4~~ 4 may be excused if the party aggrieved shows by a
11 preponderance of the evidence that he did not receive the notice of the
12 determination and the forms necessary to appeal the determination. The claimant,
13 employer or insurer shall notify the hearing officer of a change of address.

14 11. Failure to file a notice of a contested claim within the period specified
15 in subsection 2 may be excused if the claimant shows by a preponderance of the
16 evidence that he did not receive the notice of the determination and the forms
17 necessary to file the notice. The claimant or employer shall notify the insurer of a
18 change of address.

19 12. Within 10 days after receiving a notice of a contested claim pursuant to
20 subsection 2, the appeals officer shall:

21 (a) Schedule a hearing on the merits of the contested claim for a date and
22 time within ~~60~~ 60 days after his receipt of the notice at a place in Carson City,
23 Nevada, or Las Vegas, Nevada, or upon agreement of one or more of the parties
24 to pay all additional costs directly related to an alternative location, at any other
25 place of convenience to the parties, at the discretion of the appeals officer; and

26 (b) Give notice by mail or by personal service to all parties to the matter and
27 their attorneys or agents ~~for least 20 days before the date and time scheduled.~~
28 within 10 days after scheduling the hearing.

29 The scheduled date must allow sufficient time for full disclosure, exchange
30 and examination of medical and other relevant information. A party may not
31 introduce information at the hearing which was not previously disclosed to the
32 other parties unless all parties agree to the introduction.

33 Sec. 3. NRS 616C.360 is hereby amended to read as follows:

34 616C.360 1. A stenographic or electronic record must be kept of the hearing
35 before the appeals officer and the rules of evidence applicable to contested cases
36 under chapter 233B of NRS apply to the hearing.

37 2. The appeals officer must hear any matter raised before him on its merits,
38 including new evidence bearing on the matter.

39 3. If there is a medical question or dispute concerning an injured employee's
40 condition or concerning the necessity of treatment for which authorization for
41 payment has been denied, the appeals officer may:

42 (a) Order an independent medical examination and refer the employee to a
43 physician or chiropractor of his choice who has demonstrated special competence
44 to treat the particular medical condition of the employee, whether or not the
45 physician or chiropractor is on the insurer's panel of providers of health care. If the
46 medical question concerns the rating of a permanent disability, the appeals officer
47 may refer the employee to a rating physician or chiropractor. The rating physician
48 or chiropractor must be selected in rotation from the list of qualified physicians or
49 chiropractors maintained by the Administrator pursuant to subsection 2 of NRS
50 616C.490, unless the insurer and the injured employee otherwise agree to a rating
51 physician or chiropractor. The insurer shall pay the costs of any examination
52 requested by the appeals officer.

(b) If the medical question or dispute is relevant to an issue involved in the matter before the appeals officer and all parties agree to the submission of the matter to an external review organization, submit the matter to an external review organization in accordance with NRS 616C.363 and any regulations adopted by the Commissioner.

4. If an injured employee has requested payment for the cost of obtaining a second determination of his percentage of disability pursuant to NRS 616C.100, the appeals officer shall decide whether the determination of the higher percentage of disability made pursuant to NRS 616C.100 is appropriate and, if so, may order the insurer to pay to the employee an amount equal to the maximum allowable fee established by the Administrator pursuant to NRS 616C.260 for the type of service performed, or the usual fee of that physician or chiropractor for such service, whichever is less.

5. The appeals officer shall order an insurer, organization for managed care or employer who provides accident benefits for injured employees pursuant to NRS 616C.265 to pay to the appropriate person the charges of a provider of health care if the conditions of NRS 616C.138 are satisfied.

6. Any party to the appeal *or contested case* or the appeals officer may order a transcript of the record of the hearing at any time before the seventh day after the hearing. The transcript must be filed within 30 days after the date of the order unless the appeals officer otherwise orders.

7. ~~The~~ *Except as otherwise provided in subsection 8, the* appeals officer shall render his decision:

(a) If a transcript is ordered within 7 days after the hearing, within 30 days after the transcript is filed; or

(b) If a transcript has not been ordered, within 30 days after the date of the hearing.

8. *The appeals officer shall render his decision on a contested claim submitted pursuant to subsection 2 of NRS 616C.345 within 15 days after:*

(a) The date of the hearing; or

(b) If the appeals officer orders an independent medical examination, the date the appeals officer receives the report of the examination, unless both parties to the contested claim agree to a later date.

9. The appeals officer may affirm, modify or reverse any decision made by ~~the~~ a hearing officer and issue any necessary and proper order to give effect to his decision.