

34A-3-109 Limitations -- Rights barred if not filed within limits -- Burden of proof.

- (1) The limitation of rights regarding medical benefits provided in Subsection 34A-2-417(1) does not apply to compensable occupational diseases under the terms of this chapter.
- (2)
 - (a) A claim described in Subsection (2)(b) is barred, unless the employee:
 - (i) files an application for hearing with the Division of Adjudication no later than six years from the date the employee's cause of action arose; and
 - (ii) by no later than 12 years from the date on which the employee's cause of action arose, is able to meet the employee's burden of proving that the employee is due the compensation claimed under this chapter.
 - (b) Subsection (2)(a) applies to a claim for compensation for:
 - (i) temporary total disability benefits;
 - (ii) temporary partial disability benefits;
 - (iii) permanent partial disability benefits; or
 - (iv) permanent total disability benefits.
 - (c) The commission may enter an order awarding or denying an employee's claim for compensation under this chapter within a reasonable time period beyond 12 years from the date on which the employee's cause of action arose, if:
 - (i) the employee complies with Subsections (2)(a)(i) and (ii); and
 - (ii) 12 years from the date on which the employee's cause of action arose:
 - (A)
 - (I) the employee is fully cooperating in a commission approved reemployment plan; and
 - (II) the results of that commission approved reemployment plan are not known; or
 - (B) the employee is actively adjudicating issues of compensability before the commission.
- (3)
 - (a) Subject to Subsection (3)(b), a claim for death benefits is barred unless an application for hearing is filed within one year of the date the deceased employee's dependents knew, or in the exercise of reasonable diligence should have known, that the employee's death was caused by an occupational disease.
 - (b) A dependents' claim for death benefits may not be actionable more than six years after the employee's cause of action arises.
- (4)
 - (a)
 - (i) Subject to Subsections (2)(c) and (4)(b), after an employee files an application for hearing within six years from the date on which the cause of action arose, the Division of Adjudication may enter an order to show cause why the employee's claim should not be dismissed because the employee has failed to meet the employee's burden of proof to establish an entitlement to compensation claimed in the application for hearing.
 - (ii) The order described in Subsection (4)(a)(i) may be entered on the motion of the:
 - (A) Division of Adjudication;
 - (B) employee's employer; or
 - (C) employer's insurance carrier.
 - (b) Under Subsection (4)(a), the Division of Adjudication may dismiss a claim in an application for hearing:
 - (i) without prejudice; or
 - (ii) with prejudice only if:
 - (A) the Division of Adjudication adjudicates the merits of the employee's entitlement to the compensation claimed in the application for hearing; or

(B) the employee fails to comply with Subsection (2)(a)(ii).

(c) If a claim is dismissed without prejudice under Subsection (4)(b), the employee is subject to the time limits under Subsection (2)(a) to claim compensation under this chapter.

Amended by Chapter 261, 1999 General Session