

1 **LABOR COMMISSION DECISION AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Mayne**

5 House Sponsor: Don L. Ipson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Labor Code to address when decisions are final and can be
10 enforced.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ clarifies when a decision of the commissioner or Appeals Board is a final decision
- 14 of the commission;
- 15 ▶ addresses enforcement by filing abstracts with a district court; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **34A-1-303**, as last amended by Laws of Utah 2013, Chapter 428

24 **34A-2-212**, as renumbered and amended by Laws of Utah 1997, Chapter 375

25 **34A-2-801**, as last amended by Laws of Utah 2013, Chapter 428

27 *Be it enacted by the Legislature of the state of Utah:*

28 Section 1. Section **34A-1-303** is amended to read:

29 **34A-1-303. Review of administrative decision.**

30 (1) A decision entered by an administrative law judge under this title is the final order
31 of the commission unless a further appeal is initiated:

32 (a) under this title; and

33 (b) in accordance with the rules of the commission governing the review.

34 (2) (a) Unless otherwise provided, a person who is entitled to appeal a decision of an
35 administrative law judge under this title may appeal the decision by filing a motion for review
36 with the Division of Adjudication.

37 (b) (i) Unless a party in interest to the appeal requests in accordance with Subsection
38 (3) that the appeal be heard by the Appeals Board, the commissioner shall hear the review in
39 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

40 (ii) [A] Subject to Subsection (2)(b)(iii), the decision of the commissioner is a final
41 order of the commission unless within 30 days after the date the decision is issued further
42 appeal is initiated pursuant to this section or Title 63G, Chapter 4, Administrative Procedures
43 Act.

44 (iii) In the case of an award of permanent total disability benefits under Section
45 34A-2-413, the decision of the commissioner is a final order of the commission unless set aside
46 by the court of appeals.

47 (c) (i) If in accordance with Subsection (3) a party in interest to the appeal requests that
48 the appeal be heard by the Appeals Board, the Appeals Board shall hear the review in
49 accordance with:

50 (A) Section 34A-1-205; and

51 (B) Title 63G, Chapter 4, Administrative Procedures Act.

52 (ii) [A] Subject to Subsection (2)(c)(iii), the decision of the Appeals Board is a final
53 order of the commission unless within 30 days after the date the decision is issued further
54 appeal is initiated pursuant to this section or Title 63G, Chapter 4, Administrative Procedures
55 Act.

56 (iii) In the case of an award of permanent total disability benefits under Section
57 34A-2-413, the decision of the Appeals Board is a final order of the commission unless set

58 aside by the court of appeals.

59 (d) The commissioner may transfer a motion for review to the Appeals Board for
60 decision if the commissioner determines that the commissioner's ability to impartially decide
61 the motion for review might reasonably be questioned.

62 (3) A party in interest may request that an appeal be heard by the Appeals Board by
63 filing the request with the Division of Adjudication:

64 (a) as part of the motion for review; or

65 (b) if requested by a party in interest who did not file a motion for review, within 20
66 days of the date the motion for review is filed with the Division of Adjudication.

67 (4) (a) On appeal, the commissioner or the Appeals Board may:

68 (i) affirm the decision of an administrative law judge;

69 (ii) modify the decision of an administrative law judge;

70 (iii) return the case to an administrative law judge for further action as directed; or

71 (iv) reverse the findings, conclusions, and decision of an administrative law judge.

72 (b) The commissioner or Appeals Board may not conduct a trial de novo of the case.

73 (c) The commissioner or Appeals Board may base its decision on:

74 (i) the evidence previously submitted in the case; or

75 (ii) on written argument or written supplemental evidence requested by the
76 commissioner or Appeals Board.

77 (d) The commissioner or Appeals Board may permit the parties to:

78 (i) file briefs or other papers; or

79 (ii) conduct oral argument.

80 (e) The commissioner or Appeals Board shall promptly notify the parties to any
81 proceedings before the commissioner or Appeals Board of its decision, including its findings
82 and conclusions.

83 (5) (a) Each decision of a member of the Appeals Board shall represent the member's
84 independent judgment.

85 (b) A member of the Appeals Board may not participate in any case in which the

86 member is an interested party.

87 (c) If a member of the Appeals Board may not participate in a case because the member
88 is an interested party, the two members of the Appeals Board that may hear the case shall
89 assign an individual to participate as a member of the board in that case if the individual:

90 (i) is not an interested party in the case;

91 (ii) was not previously assigned to:

92 (A) preside over any proceeding related to the case; or

93 (B) take any administrative action related to the case; and

94 (iii) is representative of the following group that was represented by the member that
95 may not hear the case under Subsection (5)(b):

96 (A) employers;

97 (B) employees; or

98 (C) the public.

99 (d) The two members of the Appeals Board may appoint an individual to participate as
100 a member of the Appeals Board in a case if:

101 (i) there is a vacancy on the board at the time the Appeals Board hears the review of
102 the case;

103 (ii) the individual appointed meets the conditions described in Subsections (5)(c)(i) and
104 (ii); and

105 (iii) the individual appointed is representative of the following group that was
106 represented by the member for which there is a vacancy:

107 (A) employers;

108 (B) employees; or

109 (C) the public.

110 (6) If an order is appealed to the court of appeals after the party appealing the order has
111 exhausted all administrative appeals, the court of appeals has jurisdiction to:

112 (a) review, reverse, remand, or annul any order of the commissioner or Appeals Board;

113 or

114 (b) suspend or delay the operation or execution of the order of the commissioner or
115 Appeals Board being appealed.

116 Section 2. Section 34A-2-212 is amended to read:

117 **34A-2-212. Docketing awards in district court -- Enforcing judgment.**

118 (1) (a) ~~Am~~ Except as provided in Subsection (3), an abstract of ~~any~~ a final order of
119 the commission providing an award may be filed under this chapter or Chapter 3, Utah
120 Occupational Disease Act, in the office of the clerk of the district court of any county in the
121 state when all administrative and appellate remedies are exhausted.

122 (b) The abstract shall be docketed in the judgment docket of the district court where the
123 abstract is filed. The time of the receipt of the abstract shall be noted on the abstract by the
124 clerk of the district court and entered in the docket.

125 (c) When filed and docketed under Subsections (1)(a) and (b), the order shall constitute
126 a lien from the time of the docketing upon the real property of the employer situated in the
127 county, for a period of eight years from the date of the order unless the award provided in the
128 final order is satisfied during the eight-year period.

129 (d) Execution may be issued on the lien within the same time and in the same manner
130 and with the same effect as if ~~said~~ the award were a judgment of the district court.

131 (2) (a) If the employer was uninsured at the time of the injury, the county attorney for
132 the county in which the applicant or the employer resides, depending on the district in which
133 the final order is docketed, shall enforce the judgment when requested by the commission or
134 division on behalf of the commission.

135 (b) In an action to enforce an order docketed under Subsection (1), reasonable
136 ~~attorney's~~ attorney fees and court costs shall be allowed in addition to the award.

137 (3) Unless stayed pursuant to Section 63G-4-405, or set aside by the court of appeals, a
138 preliminary or final decision of the commissioner or Appeals Board awarding permanent total
139 disability compensation under Section 34A-2-413 is enforceable by abstract filed in the office
140 of the clerk of the district court of any county in the state.

141 Section 3. Section 34A-2-801 is amended to read:

142 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**
143 **administrative action.**

144 (1) (a) To contest an action of the employee's employer or its insurance carrier
145 concerning a compensable industrial accident or occupational disease alleged by the employee
146 or a dependent any of the following shall file an application for hearing with the Division of
147 Adjudication:

148 (i) the employee;

149 (ii) a representative of the employee, the qualifications of whom are defined in rule by
150 the commission; or

151 (iii) a dependent as described in Section 34A-2-403.

152 (b) To appeal the imposition of a penalty or other administrative act imposed by the
153 division on the employer or its insurance carrier for failure to comply with this chapter or
154 Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for
155 hearing with the Division of Adjudication:

156 (i) the employer;

157 (ii) the insurance carrier; or

158 (iii) a representative of either the employer or the insurance carrier, the qualifications
159 of whom are defined in rule by the commission.

160 (c) A person providing goods or services described in Subsections 34A-2-407(11) and
161 34A-3-108(12) may file an application for hearing in accordance with Section 34A-2-407 or
162 34A-3-108.

163 (d) An attorney may file an application for hearing in accordance with Section
164 34A-1-309.

165 (2) (a) Unless all parties agree to the assignment in writing, the Division of
166 Adjudication may not assign the same administrative law judge to hear a claim under this
167 section by an injured employee if the administrative law judge previously heard a claim by the
168 same injured employee for a different injury or occupational disease.

169 (b) Unless all parties agree to the appointment in writing, an administrative law judge

170 may not appoint the same medical panel or individual panel member to evaluate a claim by an
171 injured employee if the medical panel or individual panel member previously evaluated a claim
172 by the same injured employee for a different injury or occupational disease.

173 (3) Unless a party in interest appeals the decision of an administrative law judge in
174 accordance with Subsection (4), the decision of an administrative law judge on an application
175 for hearing filed under Subsection (1) is a final order of the commission 30 days after the day
176 on which the decision is issued. An administrative law judge shall issue a decision by no later
177 than 60 days from the day on which the hearing is held under this part unless:

- 178 (a) the parties agree to a longer period of time; or
- 179 (b) a decision within the 60-day period is impracticable.

180 (4) (a) A party in interest may appeal the decision of an administrative law judge by
181 filing a motion for review with the Division of Adjudication within 30 days of the date the
182 decision is issued.

183 (b) Unless a party in interest to the appeal requests under Subsection (4)(c) that the
184 appeal be heard by the Appeals Board, the commissioner shall hear the review.

185 (c) A party in interest may request that an appeal be heard by the Appeals Board by
186 filing the request with the Division of Adjudication:

- 187 (i) as part of the motion for review; or
- 188 (ii) if requested by a party in interest who did not file a motion for review, within 20
189 days of the day on which the motion for review is filed with the Division of Adjudication.

190 (d) A case appealed to the Appeals Board shall be decided by the majority vote of the
191 Appeals Board.

192 (5) ~~[All records on appeals shall be maintained by the Division of Adjudication. Those~~
193 ~~records shall include]~~ The Division of Adjudication shall maintain a record on appeal,
194 including an appeal docket showing the receipt and disposition of the appeals on review.

195 (6) Upon appeal, the commissioner or Appeals Board shall make its decision in
196 accordance with Section [34A-1-303](#). The commissioner or Appeals Board shall issue a
197 decision under this part by no later than 90 days from the day on which the motion for review is

198 filed unless:

199 (a) the parties agree to a longer period of time; or

200 (b) a decision within the 90-day period is impracticable.

201 (7) The commissioner or Appeals Board shall promptly notify the parties to a
202 proceeding before it of its decision, including its findings and conclusions.

203 (8) ~~[The]~~ (a) Subject to Subsection (8)(b), the decision of the commissioner or
204 Appeals Board is final unless within 30 days after the date the decision is issued further appeal
205 is initiated under the provisions of this section or Title 63G, Chapter 4, Administrative
206 Procedures Act.

207 (b) In the case of an award of permanent total disability benefits under Section
208 34A-2-413, the decision of the commissioner or Appeals Board is a final order of the
209 commission unless set aside by the court of appeals.

210 (9) (a) Within 30 days after the day on which the decision of the commissioner or
211 Appeals Board is issued, an aggrieved party may secure judicial review by commencing an
212 action in the court of appeals against the commissioner or Appeals Board for the review of the
213 decision of the commissioner or Appeals Board.

214 (b) In an action filed under Subsection (9)(a):

215 (i) any other party to the proceeding before the commissioner or Appeals Board shall
216 be made a party; and

217 (ii) the commission shall be made a party.

218 (c) A party claiming to be aggrieved may seek judicial review only if the party exhausts
219 the party's remedies before the commission as provided by this section.

220 (d) At the request of the court of appeals, the commission shall certify and file with the
221 court all documents and papers and a transcript of all testimony taken in the matter together
222 with the decision of the commissioner or Appeals Board.

223 (10) (a) The commission shall make rules, in accordance with Title 63G, Chapter 3,
224 Utah Administrative Rulemaking Act, to facilitate timely completion of administrative actions
225 under this part.

226 (b) The commission shall monitor the time from filing of an application for a hearing
227 to issuance of a final order of the commission for cases brought under this part.

228 (c) The commission shall annually report to the Business and Labor Interim
229 Committee:

230 (i) the number of cases for which an application for hearing is filed under this part in
231 the previous calendar year;

232 (ii) the number of cases described in Subsection (10)(c)(i) for which the decision of the
233 administrative law judge was not issued within the 60-day period required by Subsection (3);

234 (iii) the number of cases described in Subsection (10)(c)(i) that are appealed to the
235 commissioner or Appeals Board for which the decision of the commissioner or Appeals Board
236 was not issued within the 90-day period required by Subsection (6);

237 (iv) the number of cases described in Subsection (10)(c)(i) for which a final order of
238 the commission is issued within 18 months of the day on which the application for hearing is
239 filed;

240 (v) the number of cases for which a final order of the commission is not issued within
241 18 months of the day on which the application for a hearing is filed; and

242 (vi) the reasons the cases described in Subsection (10)(c)(v) were not resolved within
243 18 months of the day on which the application for a hearing is filed.