

Public Law 92-576

AN ACT

To amend the Longshoremen's and Harbor Workers' Compensation Act, and for other purposes.

October 27, 1972
[S. 2318]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972".

Longshoremen's
and Harbor
Workers' Compensa-
tion Act
Amendments of
1972.

COVERAGE

SEC. 2. (a) Section 2(3) of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 902) is amended to read as follows:

Definitions.

"(3) The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net."

(b) Section 2(4) of such Act is amended by striking out "(including any dry dock)" and inserting in lieu thereof "(including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel)".

(c) Section 3(a) of such Act is amended by striking out "(including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law", and inserting in lieu thereof "(including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel)".

44 Stat. 1426.
33 USC 903.

STUDENT BENEFITS

SEC. 3. (a) Section 2 of the Longshoremen's and Harbor Workers' Compensation Act is amended by redesignating paragraph (19) as paragraph (20) and adding a new paragraph (19) as follows:

Definitions.

"(19) The term 'student' means a person regularly pursuing a full-time course of study or training at an institution which is—

"(A) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof,

"(B) a school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body,

"(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited, or

"(D) an additional type of educational or training institution as defined by the Secretary,

but not after he reaches the age of twenty-three or has completed four years of education beyond the high school level, except that, where his twenty-third birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed

to have ceased to be a student during any interim between school years if the interim does not exceed five months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed to be a student under this Act during a period of service in the Armed Forces of the United States."

52 Stat. 1164.
33 USC 902.

(b) The last sentence of section 2(14) of such Act is amended to read as follows: "'Child', 'grandchild', 'brother', and 'sister' include only a person who is under eighteen years of age, or who, though eighteen years of age or over, is (1) wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or (2) a student as defined in paragraph (19) of this section."

TIME FOR COMMENCEMENT OF COMPENSATION

70 Stat. 654.
33 USC 906.

SEC. 4. Section 6(a) of the Longshoremen's and Harbor Workers' Compensation Act is amended by striking out "more than twenty-eight days" and inserting in lieu thereof "more than fourteen days".

MAXIMUM AND MINIMUM LIMITS OF DISABILITY COMPENSATION AND ALLOWANCE

75 Stat. 203.

SEC. 5. (a) Section 6 of the Longshoremen's and Harbor Workers' Compensation Act is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(b)(1) Except as provided in subsection (c), compensation for disability shall not exceed the following percentages of the applicable national average weekly wage as determined by the Secretary under paragraph (3):

"(A) 125 per centum or \$167, whichever is greater, during the period ending September 30, 1973.

"(B) 150 per centum during the period beginning October 1, 1973, and ending September 30, 1974.

"(C) 175 per centum during the period beginning October 1, 1974, and ending September 30, 1975.

"(D) 200 per centum beginning October 1, 1975.

"(2) Compensation for total disability shall not be less than 50 per centum of the applicable national average weekly wage determined by the Secretary under paragraph (3), except that if the employee's average weekly wages as computed under section 10 are less than 50 per centum of such national average weekly wage, he shall receive his average weekly wages as compensation for total disability.

Post, p. 1258.

"(3) As soon as practicable after June 30 of each year, and in any event prior to October 1 of such year, the Secretary shall determine the national average weekly wage for the three consecutive calendar quarters ending June 30. Such determination shall be the applicable national average weekly wage for the period beginning with October 1 of that year and ending with September 30 of the next year. The initial determination under this paragraph shall be made as soon as practicable after the enactment of this subsection.

"(c) The maximum rate of compensation for a nonappropriated fund instrumentality employee shall be equal to 66⅔ per centum of the maximum rate of basic pay established for a Federal employee in grade GS-12 by section 5332 of title 5, United States Code, and the minimum rate of compensation for such an employee shall be

5 USC 5332
note.

equal to 66 $\frac{2}{3}$ per centum of the minimum rate of basic pay established for a Federal employee in grade GS-2 by such section.

“(d) Determinations under this subsection with respect to a period shall apply to employees or survivors currently receiving compensation for permanent total disability or death benefits during such period, as well as those newly awarded compensation during such period.”

(b) Section 2 of such Act as amended by this Act is further amended by redesignating paragraph (20) thereof as paragraph (21) and by inserting immediately after paragraph (19) the following:

“(20) The term ‘national average weekly wage’ means the national average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls.”

(c) Section 8(d) of such Act is amended to read as follows:

“(d) (1) If an employee who is receiving compensation for permanent partial disability pursuant to section 8(c) (1)–(20) dies from causes other than the injury, the total amount of the award unpaid at the time of death shall be payable to or for the benefit of his survivors, as follows:

“(A) if the employee is survived only by a widow or widower, such unpaid amount of the award shall be payable to such widow or widower,

“(B) if the employee is survived only by a child or children, such unpaid amount of the award shall be paid to such child or children in equal shares,

“(C) if the employee is survived by a widow or widower and a child or children, such unpaid amount of the award shall be payable to such survivors in equal shares,

“(D) if there be no widow or widower and no surviving child or children, such unpaid amount of the award shall be paid to the survivors specified in section 9(d) (other than a wife, husband, or child); and the amount to be paid each such survivor shall be determined by multiplying such unpaid amount of the award by the appropriate percentage specified in section 9(d), but if the aggregate amount to which all such survivors are entitled, as so determined, is less than such unpaid amount of the award, the excess amount shall be divided among such survivors pro rata according to the amount otherwise payable to each under this subparagraph.

“(2) Notwithstanding any other limitation in section 9, the total amount of any award for permanent partial disability pursuant to section 8(c) (1)–(20) unpaid at time of death shall be payable in full in the appropriate distribution.

“(3) If an employee who was receiving compensation for permanent partial disability pursuant to section 8(c) (21) dies from causes other than the injury, his survivors shall receive death benefits as provided in section 9(b)–(g), except that the percentage figures therein shall be applied to the weekly compensation payable to the employee at the time of his death multiplied by 1.5, rather than to his average weekly wages.

“(4) An award for disability may be made after the death of the injured employee. Except where compensation is payable under section 8(c) (21), if there be no survivors as prescribed in this section, then the compensation payable under this subsection shall be paid to the special fund established under section 44(a) of this Act.”

(d) The first phrase of section 9 of such Act, preceding the first colon, is amended to read as follows:

“If the injury causes death, or if the employee who sustains permanent total disability due to the injury thereafter dies from causes

5 USC 5332
note.

Ante, p. 1251.

“National average weekly wage.”

44 Stat. 1429.
33 USC 908.

44 Stat. 1427;
70 Stat. 655;
Post, p. 1255.

Post, p. 1258.

Post, pp. 1257,
1258.

Post, p. 1256.
33 USC 909.

other than the injury, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:"

75 Stat. 203.
33 USC 914.

(e) Section 14 of such Act is amended by striking out subsection (m).

MEDICAL SERVICES

74 Stat. 900.
33 USC 907.

SEC. 6. (a) Section 7 of the Longshoremen's and Harbor Workers' Compensation Act is amended to read as follows:

MEDICAL SERVICES AND SUPPLIES

"SEC. 7. (a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

Physician,
selection.

"(b) The employee shall have the right to choose an attending physician authorized by the Secretary to provide medical care under this Act as hereinafter provided. If, due to the nature of the injury, the employee is unable to select his physician and the nature of the injury requires immediate medical treatment and care, the employer shall select a physician for him. The Secretary shall actively supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may, on his own initiative or at the request of the employer, order a change of physicians or hospitals when in his judgment such change is desirable or necessary in the interest of the employee. Change of physicians at the request of employees shall be permitted in accordance with regulations of the Secretary.

Authorized
physicians.

"(c) The Secretary may designate the physicians who are authorized to render medical care under the Act. The names of physicians so designated in the community shall be made available to employees through posting or in such other form as the Secretary may prescribe.

Report.

"(d) An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless he shall have requested the employer to furnish such treatment or services, or to authorize provision of medical or surgical services by the physician selected by the employee, and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within ten days following the first treatment the physician giving such treatment furnish to the employer and the Secretary a report of such injury and treatment, on a form prescribed by the Secretary. The Secretary may, however, excuse the failure to furnish such report within ten days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.

“(e) In the event that medical questions are raised in any case, the Secretary shall have the power to cause the employee to be examined by a physician employed or selected by the Secretary and to obtain from such physician a report containing his estimate of the employee's physical impairment and such other information as may be appropriate. Any party who is dissatisfied with such report may request a review or reexamination of the employee by one or more different physicians employed or selected by the Secretary. The Secretary shall order such review or reexamination unless he finds that it is clearly unwarranted. Such review or reexamination shall be completed within two weeks from the date ordered unless the Secretary finds that because of extraordinary circumstances a longer period is required. The Secretary shall have the power in his discretion to charge the cost of examination or review under this subsection to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk, in appropriate cases, or to the special fund in section 44.

Physical
examination.

Review.

Post, p. 1256.

“(f) An employee shall submit to a physical examination under subsection (e) at such place as the Secretary may require. The place, or places, shall be designated by the Secretary and shall be reasonably convenient for the employee. No physician selected by the employer, carrier, or employee shall be present at or participate in any manner in such examination, nor shall conclusions of such physicians as to the nature or extent of impairment or the cause of impairment be available to the examining physician unless otherwise ordered, for good cause, by the Secretary. Such employer or carrier shall, upon request, be entitled to have the employee examined immediately thereafter and upon the same premises by a qualified physician or physicians in the presence of such physician as the employee may select, if any. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee may refuse to submit to examination.

“(g) All fees and other charges for medical examinations, treatment, or service shall be limited to such charges as prevail in the community for such treatment, and shall be subject to regulation by the Secretary. The Secretary shall issue regulations limiting the nature and extent of medical expenses chargeable against the employer without authorization by the employer or the Secretary.

Fees.

Regulations.

“(h) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party not in the same employ, or that suit has been brought against such third party. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in section 33(b) of this Act.

Third party
liability.

Post, p. 1262.

“(i) Unless the parties to the claim agree, the Secretary shall not employ or select any physician for the purpose of making examinations or reviews under subsection (e) of this section who, during such employment, or during the period of two years prior to such employment, has been employed by, or accepted or participated in any fee relating to a workmen's compensation claim from any insurance carrier or any self-insurer.”

DISFIGUREMENTS

SEC. 7. Section 8(c) (20) of the Longshoremen's and Harbor Workers' Compensation Act is amended to read as follows:

“(20) Disfigurement: Proper and equitable compensation not to exceed \$3,500 shall be awarded for serious disfigurement of the face, head, or neck or of other normally exposed areas likely to handicap the employee in securing or maintaining employment.”

44 Stat. 1428.
33 USC 908.

SPECIAL FUND

Sec. 8. (a) Section 44(a) of the Longshoremen's and Harbor Workers' Compensation Act is amended by adding a period after the word "fund" in the first sentence thereof and deleting the remainder of the sentence.

(b) Section 44 of such Act is further amended by redesignating subsections (d), (e), (f), and (g) as (f), (g), (h), and (i), respectively and by striking out subsection (c) and inserting in lieu thereof the following:

Payments.

"(c) Payments into such fund shall be made as follows:

"(1) Whenever the Secretary determines that there is no person entitled under this Act to compensation for the death of an employee which would otherwise be compensable under this Act, the appropriate employer shall pay \$5,000 as compensation for the death of such an employee.

"(2) At the beginning of each calendar year the Secretary shall estimate the probable expenses of the fund during that calendar year and each carrier or self-insurer shall make payments into the fund on a prorated assessment by the Secretary in the proportion that the total compensation and medical payments made on risks covered by this Act by each carrier and self-insurer bears to the total of such payments made by all carriers and self-insurers under the Act in the prior calendar year in accordance with a formula and schedule to be determined from time to time by the Secretary to maintain adequate reserves in the fund.

"(3) All amounts collected as fines and penalties under the provisions of this Act shall be paid into such fund.

Records,
availability; in-
vestigations.

"(d) (1) For the purpose of making rules, regulations, and determinations under this section under and for providing enforcement thereof, the Secretary may investigate and gather appropriate data from each carrier and self-insurer. For that purpose, the Secretary may enter and inspect such places and records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate.

Record-
keeping.

"(2) Each carrier and self-insurer shall make, keep, and preserve such records, and make such reports and provide such additional information, as prescribed by regulation or order of the Secretary, as the Secretary deems necessary or appropriate to carry out his responsibilities under this section.

"(3) For the purpose of any hearing or investigation related to determinations or the enforcement of the provisions of this section, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C., title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor.

38 Stat. 722.

Appropriation.

"(e) There is hereby authorized to be appropriated to the Secretary the sum of \$2,000,000 which the Secretary shall immediately deposit into the fund. Upon deposit in the fund such moneys shall be treated as the property of such fund. This sum, without additional payments for interest, shall be repaid from the money or property belonging to the fund on a schedule of repayment set by the Secretary: *Provided*, That full repayment must be made no later than five years from the date of deposit into the fund. Each such repayment, as made, shall be covered into the Treasury of the United States as miscellaneous receipts."

Repayment.

(d) Section 44 of such Act is further amended by adding the following new subsections (j) and (k):

“(j) The proceeds of this fund shall be available for payments:

“(1) Pursuant to section 10 and 11 with respect to initial and subsequent annual adjustments in compensation for total permanent disability or death which occurred prior to the effective date of this subsection.

“(2) Under section 8 (f) and (g), under section 18(b), and under section 39(c).

“(3) To repay the sums deposited in the fund pursuant to subsection (d).

“(4) To defray the expense of making examinations as provided in section 7.

“(k) At the close of each fiscal year the Secretary shall submit to the Congress a complete audit of the fund.”

44 Stat. 1431;
62 Stat. 603.
33 USC 910,911.

70 Stat. 655,
656.
33 USC 908,918,
939.

Ante, p. 1254.
Audit.

INJURY FOLLOWING PREVIOUS IMPAIRMENT

SEC. 9. (a) Section 8(f)(1) of the Longshoremen's and Harbor Workers' Compensation Act is amended to read as follows: “(1) In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury based upon the average weekly wages of the employee at the time of the injury. If following an injury falling within the provisions of section 8(c)(1)–(20), the employee is totally and permanently disabled, and the disability is found not to be due solely to that injury, the employer shall provide compensation for the applicable prescribed period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater. In all other cases of total permanent disability or of death, found not to be due solely to that injury, of an employee having an existing permanent partial disability, the employer shall provide in addition to compensation under paragraphs (b) and (e) of this section, compensation payments or death benefits for one hundred and four weeks only. If following an injury falling within the provisions of 8(c)(1)–(20), the employee has a permanent partial disability and the disability is found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide compensation for the applicable period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater.

33 USC 908.

70 Stat. 655;
Ante, p. 1255.

“In all other cases in which the employee has a permanent partial disability, found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide in addition to compensation under paragraphs (b) and (e) of this section, compensation for one hundred and four weeks only.

(2) After cessation of the payments for the period of weeks provided for herein, the employee or his survivor entitled to benefits shall be paid the remainder of the compensation that would be due out of the special fund established in section 44.”

Ante, p. 1256.

(b) Section 8(f) of such Act is further amended by striking out paragraph (2).

DEATH BENEFITS

SEC. 10. (a) Section 9(a) of the Act is amended by striking out “\$400” and inserting in lieu thereof “\$1,000”.

(b) Sections 9 (b) and (c) of such Act are amended by striking “35” and “15” wherever they appear, and substituting “50” and “16 $\frac{2}{3}$ ” respectively.

62 Stat. 602.
33 USC 909.

52 Stat. 1166.
33 USC 909.

(c) The first sentence of section 9(d) of such Act is amended to read as follows: "If there be no surviving wife or husband or child, or if the amount payable to a surviving wife or husband and to children shall be less in the aggregate than 66 $\frac{2}{3}$ per centum of the average wages of the deceased; then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, and any other persons who satisfy the definition of the term 'dependent' in section 152 of title 26 of the United States Code, but are not otherwise eligible under this section, 20 per centum of such wages for the support of each such person during such dependency and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency."

68A Stat. 43;
83 Stat. 722.

75 Stat. 203.

(d) Section 9(e) of such Act is amended to read as follows:

Ante, p. 1252.

"(e) In computing death benefits the average weekly wages of the deceased shall be considered to have been not less than the applicable national average weekly wage as prescribed in section 6(b) but the total weekly benefits shall not exceed the average weekly wages of the deceased."

DETERMINATION OF PAY

44 Stat. 1431;
62 Stat. 603.
33 USC 910.

SEC. 11. Section 10 of the Act is amended by adding the following new subsections:

"(f) Effective October 1 of each year, the compensation or death benefits payable for permanent total disability or death arising out of injuries sustained after the date of enactment of this subsection shall be increased by a percentage equal to the percentage (if any) by which the applicable national weekly wage for the period beginning on such October 1, as determined under section 6(b), exceeds the applicable national average weekly wage, as so determined, for the period beginning with the preceding October 1.

"(g) The weekly compensation after adjustment under subsection (f) shall be fixed at the nearest dollar. No adjustment of less than \$1 shall be made, but in no event shall compensation or death benefits be reduced.

"(h) (1) Not later than ninety days after the date of enactment of this subsection, the compensation to which an employee or his survivor is entitled due to total permanent disability or death which commenced or occurred prior to enactment of this subsection shall be adjusted. The amount of such adjustment shall be determined in accordance with regulations of the Secretary by designating as the employee's average weekly wage the applicable national average weekly wage determined under section 6(b) and (A) computing the compensation to which such employee or survivor would be entitled if the disabling injury or death had occurred on the day following such enactment date and (B) subtracting therefrom the compensation to which such employee or survivor was entitled on such enactment date; except that no such employee or survivor shall receive total compensation amounting to less than that to which he was entitled on such enactment date. Notwithstanding the foregoing sentence, where such an employee or his survivor was awarded compensation as the result of death or permanent total disability at less than the maximum rate that was provided in this Act at the time of the injury which resulted in the death or disability, then his average weekly wage shall be determined by increasing his average weekly wage at the time of such injury by the percentage which the applicable national average weekly wage has increased between the year in which the injury occurred and the first day of the first month following the enactment of this section. Where

such injury occurred prior to 1947, the Secretary shall determine, on the basis of such economic data as he deems relevant, the amount by which the employee's average weekly wage shall be increased for the pre-1947 period.

"(2) Fifty per centum of any additional compensation or death benefit paid as a result of the adjustment required by paragraphs (1) and (3) of this subsection shall be paid out of the special fund established under section 44 of this Act, and 50 per centum shall be paid from appropriations.

Ante, p. 1256.

"(3) For the purposes of subsections (f) and (g) an injury which resulted in permanent total disability or death which occurred prior to the date of enactment of this subsection shall be considered to have occurred on the day following such enactment date."

TIME FOR NOTICE AND CLAIMS

SEC. 12. (a) Section 12(a) of the Longshoremen's and Harbor Workers' Compensation Act is amended to read as follows:

44 Stat. 1431.
33 USC 912.

"SEC. 12. (a) Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware or in the exercise of reasonable diligence should have been aware of a relationship between the injury or death and the employment. Such notice shall be given (1) to the deputy commissioner in the compensation district in which the injury occurred, and (2) to the employer."

(b) Section 13(a) of such Act is amended to read as follows:

33 USC 913.

"SEC. 13. (a) Except as otherwise provided in this section, the right to compensation for disability or death under this Act shall be barred unless a claim therefore is filed within one year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or death occurred. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment."

FEEES FOR SERVICES

SEC. 13. Section 28 of the Longshoremen's and Harbor Workers' Compensation Act is amended to read as follows:

33 USC 928.

"FEEES FOR SERVICES

"SEC. 28. (a) If the employer or carrier declines to pay any compensation on or before the thirtieth day after receiving written notice of a claim for compensation having been filed from the deputy commissioner, on the ground that there is no liability for compensation within the provisions of this Act, and the person seeking benefits shall thereafter have utilized the services of an attorney at law in the successful prosecution of his claim, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee against the employer or carrier in an amount approved by the deputy commissioner, Board, or court, as the case may be, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum after the compensation order becomes final.

Attorney's fee.

44 Stat. 1432.
33 USC 914.

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Ante, p. 1254.

Approval;
payment.

Costs, wit-
nesses' fees.

Unapproved
fees, solici-
tation, penalty.

“(b) If the employer or carrier pays or tenders payment of compensation without an award pursuant to section 14(a) and (b) of this Act, and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the deputy commissioner or Board shall set the matter for an informal conference and following such conference the deputy commissioner or Board shall recommend in writing a disposition of the controversy. If the employer or carrier refuse to accept such written recommendation, within fourteen days after its receipt by them, they shall pay or tender to the employee in writing the additional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation, and thereafter utilizes the services of an attorney at law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation. The foregoing sentence shall not apply if the controversy relates to degree or length of disability, and if the employer or carrier offers to submit the case for evaluation by physicians employed or selected by the Secretary, as authorized in section 7(e) and offers to tender an amount of compensation based upon the degree or length of disability found by the independent medical report at such time as an evaluation of disability can be made. If the claimant is successful in review proceedings before the Board or court in any such case an award may be made in favor of the claimant and against the employer or carrier for a reasonable attorney's fee for claimant's counsel in accord with the above provisions. In all other cases any claim for legal services shall not be assessed against the employer or carrier.

“(c) In all cases fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the Board or any court for review of any action, award, order, or decision, the Board or court may approve an attorney's fee for the work done before it by the attorney for the claimant. An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation due under an award; and the deputy commissioner, Board, or court shall fix in the award approving the fee, such lien and manner of payment.

“(d) In cases where an attorney's fee is awarded against an employer or carrier there may be further assessed against such employer or carrier as costs, fees and mileage for necessary witnesses attending the hearing at the instance of claimant. Both the necessity for the witness and the reasonableness of the fees of expert witnesses must be approved by the hearing officer, the Board, or the court, as the case may be. The amounts awarded against an employer or carrier as attorney's fees, costs, fees and mileage for witnesses shall not in any respect affect or diminish the compensation payable under this Act.

“(e) Any person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of a claimant, unless such consideration or gratuity is approved by the deputy commissioner, Board, or court, or who makes it a business to solicit employment for a lawyer, or for himself in respect of any claim or award for compensation, shall upon conviction thereof, for each offense be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.”

HEARING PROCEDURE

SEC. 14. Section 19(d) of the Longshoremen's and Harbor Workers' Compensation Act is amended to read as follows:

"(d) Notwithstanding any other provisions of this Act, any hearing held under this Act shall be conducted in accordance with the provisions of section 554 of title 5 of the United States Code. Any such hearing shall be conducted by a hearing examiner qualified under section 3105 of that title. All powers, duties, and responsibilities vested by this Act, on the date of enactment of the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, in the deputy commissioners with respect to such hearings shall be vested in such hearing examiners."

44 Stat. 1435,
33 USC 919.

80 Stat. 384.

80 Stat. 428.

REVIEW BOARD

SEC. 15. (a) Section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act is amended to read as follows:

"(b) (1) There is hereby established a Benefits Review Board which shall be composed of three members appointed by the Secretary from among individuals who are especially qualified to serve on such Board. The Secretary shall designate one of the members of the Board to serve as chairman."

33 USC 921.
Establishment;
membership.

"(2) For the purpose of carrying out its functions under this Act, two members of the Board shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

"(3) The Board shall be authorized to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims of employees under this Act and the extensions thereof. The Board's orders shall be based upon the hearing record. The findings of fact in the decision under review by the Board shall be conclusive if supported by substantial evidence in the record considered as a whole. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier.

Authority.

"(4) The Board may, on its own motion or at the request of the Secretary, remand a case to the hearing examiner for further appropriate action. The consent of the parties in interest shall not be a prerequisite to a remand by the Board.

Remand.

"(c) Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court, to the Board, and to the other parties, and thereupon the Board shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the order of the Board and enforcing same to the extent that such order is affirmed or modified. The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay

U.S. Court of
Appeals, review.

72 Stat. 941;
80 Stat. 1323.

shall be issued unless irreparable injury would otherwise ensue to the employer or carrier. The order of the court allowing any stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the employer, and specifying the nature of the damage."

44 Stat. 1436.
33 USC 921.

Ante, p. 1253.

(b) Redesignate subsections (c) and (d) of such section as (d) and (e), respectively.

(c) Section 2 of such Act as amended by this Act is further amended by redesignating paragraph 21 as paragraph 22 and inserting after paragraph 20 the following new paragraph:

"Board."

52 Stat. 1167.
33 USC 914.

"(21) The term 'Board' shall mean the Benefits Review Board."

(d) Section 14(f) of such Act is amended by striking everything after the words "section 21" and adding in lieu thereof the following: "and an order staying payment has been issued by the Board or court."

33 USC 923,
927.

(e) Sections 23 and 27 of such Act are each amended by adding "or Board" after every reference to "deputy commissioner".

73 Stat. 391.
33 USC 933.

(f) Section 33(b) of such Act is amended by adding the term "or Board" after the term "deputy commissioner".

(g) Section 33(e)(1)(A) of such Act is amended by adding the words "or Board" after the term "deputy commissioner".

(h) Section 33(g) of such Act is amended to read as follows:

"(g) If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this Act, the employer shall be liable for compensation as determined in subdivision (f) only if the written approval of such compromise is obtained from the employer and its insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise on a form provided by the Secretary and filed in the office of the deputy commissioner having jurisdiction of such injury or death within thirty days after such compromise is made."

33 USC 935.

(i) Section 35 of such Act is amended by adding the words "the Board, or" after the words "deputy commissioner".

33 USC 940.

(j) Section 40(f) of such Act is amended by adding the words "or Board member" after the words "deputy commissioner," whenever they occur.

APPEARANCE FOR SECRETARY OF LABOR

45 Stat. 490.
33 USC 921a.

SEC. 16. Section 21a of the Act is amended to read as follows:

"SEC. 21a. Attorneys appointed by the Secretary shall represent the Secretary, the deputy commissioner, or the Board in any court proceedings under section 21 or other provisions of this Act except for proceedings in the Supreme Court of the United States."

CLAIMANT ASSISTANCE

70 Stat. 656.
33 USC 939.

SEC. 17. (a) Section 39(c) of the Longshoremen's and Harbor Workers' Compensation Act is amended by redesignating subsection (c) as paragraph (2) of such subsection and by inserting after subsection (b) thereof the following paragraph:

"(c)(1) The Secretary shall, upon request, provide persons covered by this Act with information and assistance relating to the Act's coverage and compensation and the procedures for obtaining such compensation and including assistance in processing a claim. The Secretary may, upon request, provide persons covered by this Act

with legal assistance in processing a claim. The Secretary shall also provide employees receiving compensation information on medical, manpower, and vocational rehabilitation services and assist such employees in obtaining the best such services available."

THIRD-PARTY LIABILITY

SEC. 18. (a) Section 5 of the Longshoremen's and Harbor Workers' Compensation Act is amended to read as follows:

44 Stat. 1426.
33 USC 905.

"EXCLUSIVENESS OF REMEDY AND THIRD-PARTY LIABILITY

"SEC. 5. (a) The liability of an employer prescribed in section 4 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee.

33 USC 904.

"(b) In the event of injury to a person covered under this Act caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 33 of this Act, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed by the vessel to provide ship building or repair services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing ship building or repair services to the vessel. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this Act."

Ante, p. 1262.

(b) Section 2 of such Act as amended by this Act is further amended by redesignating paragraph 22 as paragraph 23 and inserting after paragraph 21 the following new paragraph:

Ante, p. 1262.

"(22) The term 'vessel' means any vessel upon which or in connection with which any person entitled to benefits under this Act suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member."

"Vessel."

PROHIBITION AGAINST CERTAIN DISCRIMINATION AGAINST EMPLOYEES

SEC. 19. The Longshoremen's and Harbor Workers' Compensation Act is further amended by redesignating sections 49, 50, and 51 as sections 50, 51, and 52, respectively, and by inserting immediately after section 48 the following new section:

44 Stat. 1446.
33 USC 949,
950.

"DISCRIMINATION AGAINST EMPLOYEES WHO BRING PROCEEDINGS"

Penalty.

Ante, p. 1256.

"SEC. 49. It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this Act. Any employer who violates this section shall be liable to a penalty of not less than \$100 or more than \$1,000, as may be determined by the deputy commissioner. All such penalties shall be paid to the deputy commissioner for deposit in the special fund as described in section 44, and if not paid may be recovered in a civil action brought in the appropriate United States district court. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination: *Provided*, That if such employee shall cease to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from the liability for such penalties and payments shall be void."

MISCELLANEOUS PROVISIONS

52 Stat. 1165.
33 USC 908.
Agreed settlements, approval.

44 Stat. 1434.
33 USC 915,
916.

SEC. 20. (a) Section 8(i) of the Longshoremen's and Harbor Workers' Compensation Act is amended to read as follows:

"(i) (A) Whenever the deputy commissioner determines that it is for the best interests of an injured employee entitled to compensation, he may approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of section 15(b) and section 16 of this act: *Provided*, That if the employee should die from causes other than the injury after the deputy commissioner has approved an agreed settlement as provided for herein, the sum so approved shall be payable, in the manner prescribed in this subsection, to and for the benefit of the persons enumerated in subsection (d) of this section.

"(B) Whenever the Secretary determines that it is for the best interests of the injured employee entitled to medical benefits, he may approve agreed settlements of the interested parties, discharging the liability of the employer for such medical benefits, notwithstanding the provisions of section 16 of this act: *Provided*, That if the employee should die from causes other than the injury after the Secretary has approved an agreed settlement as provided for herein, the sum so approved shall be payable, in the manner prescribed in this subdivision, to and for the benefit of the persons enumerated in subdivision (d) of this section."

52 Stat. 1167.
33 USC 917.

(b) Section 17 of such Act is amended by inserting "(a)" immediately after the section designation and by adding at the end thereof the following new subsection:

Lien on compensation.
73 Stat. 537;
83 Stat. 133.

"(b) Where a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947 (29 U.S.C. 186(c)) established pursuant to a collective-bargaining agreement in effect between an employer and an employee entitled to compensation under this Act has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this Act, the Secretary may authorize a lien on such compensation in favor of the trust fund for the amount of such payments."

(c) (1) Section 2 of the Longshoremen's and Harbor Workers' Compensation Act as amended by this Act is further amended by striking out subsections (16) and (17) and inserting in lieu thereof the following new subsection (16) and by redesignating subsections 2 (18), (19), (20), (21), (22), and (23) as 2 (17), (18), (19), (20), (21), and (22), respectively.

44 Stat. 1424;
Ante, pp. 1251,
1253, 1262, 1263.

"(16) The terms 'widow or widower' includes only the decedent's wife or husband living with or dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time."

"Widow or
widower."

(2) Section 9 of the Longshoremen's and Harbor Workers' Compensation Act, as amended by this Act, is further amended by striking the phrase "surviving wife or dependent husband" each time it appears and inserting in lieu thereof the phrase "widow or widower".

Ante, pp. 1253,
1257.

(3) The amendments made by this subsection shall apply only with respect to deaths or injuries occurring after the enactment of this Act.

TECHNICAL AMENDMENT

SEC. 21. Section 3(a) (1) of the Longshoremen's and Harbor Workers' Compensation Act is amended by striking out the word "nor" and inserting in lieu thereof the word "or".

44 Stat. 1426.
33 USC 903.

EFFECTIVE DATE

SEC. 22. The amendments made by this Act shall become effective thirty days after the date of enactment of this Act.

Approved October 27, 1972.

Public Law 92-577

AN ACT

To authorize the Secretary of the Interior to engage in feasibility investigations of certain potential water resource developments.

October 27, 1972
[S. 3959]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to engage in feasibility studies of the following potential water resource developments:

Water resource
developments.
Feasibility
studies.

1. Cache Creek project in Comanche, Cotton, Tillman, Jackson, and Kiowa Counties in southwestern Oklahoma.

2. Garrison diversion unit, M&I water facilities, Pick-Sloan Missouri Basin program, in central North Dakota.

3. Oahe unit, M&I water facilities, Pick-Sloan Missouri Basin program in east-central South Dakota.

4. Ventura County Water Management project, California.

5. Tucumcari project in San Miguel County in east-central New Mexico.

6. Uncompahgre project improvement in Montrose and Delta Counties in the vicinity of Montrose and Delta, Colorado.

7. Dominguez Reservoir project in Mesa and Delta Counties, Colorado.

8. Lower James-Fort Randall water diversion proposal of the Pick-Sloan Missouri River Basin program, South Dakota.

9. Three Forks Division, Pick-Sloan Missouri Basin program, in Gallatin and Madison Counties, northwest Montana.

Approved October 27, 1972.