

sion shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(b) Filing of petition by Secretary; orders subject to review; jurisdiction; venue; procedure; conclusiveness of record and findings of Commission; enforcement of orders; contempt proceedings

The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 659 of this title, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 666 of this title, in addition to invoking any other available remedies.

(c) Discharge or discrimination against employee for exercise of rights under this chapter; prohibition; procedure for relief

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted

or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph (2) of this subsection.

(Pub. L. 91-596, §11, Dec. 29, 1970, 84 Stat. 1602; Pub. L. 98-620, title IV, §402(32), Nov. 8, 1984, 98 Stat. 3360.)

Editorial Notes

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-620 struck out provision requiring expeditious hearing of petitions filed under this subsection.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 661. Occupational Safety and Health Review Commission

(a) Establishment; membership; appointment; Chairman

The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this chapter. The President shall designate one of the members of the Commission to serve as Chairman.

(b) Terms of office; removal by President

The terms of members of the Commission shall be six years except that (1) the members of the Commission first taking office shall serve, as designated by the President at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six

years, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) Omitted

(d) Principal office; hearings or other proceedings at other places

The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

(e) Functions and duties of Chairman; appointment and compensation of administrative law judges and other employees

The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such administrative law judges and other employees as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates: *Provided*, That assignment, removal and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5.

(f) Quorum; official action

For the purpose of carrying out its functions under this chapter, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

(g) Hearings and records open to public; promulgation of rules; applicability of Federal Rules of Civil Procedure

Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

(h) Depositions and production of documentary evidence; fees

The Commission may order testimony to be taken by deposition in any proceeding pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(i) Investigatory powers

For the purpose of any proceeding before the Commission, the provisions of section 161 of this

title are hereby made applicable to the jurisdiction and powers of the Commission.

(j) Administrative law judges; determinations; report as final order of Commission

A¹ administrative law judge appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such administrative law judge by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the administrative law judge shall become the final order of the Commission within thirty days after such report by the administrative law judge, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

(k) Appointment and compensation of administrative law judges

Except as otherwise provided in this chapter, the administrative law judges shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5. Each administrative law judge shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5.

(Pub. L. 91-596, §12, Dec. 29, 1970, 84 Stat. 1603; Pub. L. 95-251, §2(a)(7), Mar. 27, 1978, 92 Stat. 183.)

Editorial Notes

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (e), is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal Rules of Civil Procedure, referred to in subsec. (g), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Subsec. (c) of this section amended sections 5314 and 5315 of Title 5, Government Organization and Employees.

In subsec. (e), reference to section 5372 of title 5 was substituted for section 5362 on authority of Pub. L. 95-454, §801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221, which redesignated sections 5361 through 5365 of title 5 as sections 5371 through 5375.

AMENDMENTS

1978—Subsecs. (e), (j), (k). Pub. L. 95-251 substituted “administrative law judge” and “administrative law judges” for “hearing examiner” and “hearing examiners”, respectively, wherever appearing.

Statutory Notes and Related Subsidiaries

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

¹ So in original. Probably should be “An”.

§ 662. Injunction proceedings**(a) Petition by Secretary to restrain imminent dangers; scope of order**

The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Appropriate injunctive relief or temporary restraining order pending outcome of enforcement proceeding; applicability of Rule 65 of Federal Rules of Civil Procedure

Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Notification of affected employees and employers by inspector of danger and of recommendation to Secretary to seek relief

Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) Failure of Secretary to seek relief; writ of mandamus

If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

(Pub. L. 91-596, §13, Dec. 29, 1970, 84 Stat. 1605.)

Editorial Notes**REFERENCES IN TEXT**

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (b), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 663. Representation in civil litigation

Except as provided in section 518(a) of title 28 relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter but all such litigations shall be subject to the direction and control of the Attorney General.

(Pub. L. 91-596, §14, Dec. 29, 1970, 84 Stat. 1606.)

§ 664. Disclosure of trade secrets; protective orders

All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this chapter which contains or which might reveal a trade secret referred to in section 1905 of title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(Pub. L. 91-596, §15, Dec. 29, 1970, 84 Stat. 1606.)

§ 665. Variations, tolerances, and exemptions from required provisions; procedure; duration

The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this chapter as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

(Pub. L. 91-596, §16, Dec. 29, 1970, 84 Stat. 1606.)

§ 666. Civil and criminal penalties**(a) Willful or repeated violation**

Any employer who willfully or repeatedly violates the requirements of section 654 of this title, any standard, rule, or order promulgated pursuant to section 655 of this title, or regulations prescribed pursuant to this chapter may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each willful violation.

(b) Citation for serious violation

Any employer who has received a citation for a serious violation of the requirements of section 654 of this title, of any standard, rule, or order promulgated pursuant to section 655 of this title, or of any regulations prescribed pursuant to this chapter, shall be assessed a civil penalty of up to \$7,000 for each such violation.