

ing investigations and taking other necessary action instead of after issuance of compensation order without anyone's approval.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

##### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

### § 920. Presumptions

In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary—

(a) That the claim comes within the provisions of this chapter.

(b) That sufficient notice of such claim has been given.

(c) That the injury was not occasioned solely by the intoxication of the injured employee.

(d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

(Mar. 4, 1927, ch. 509, §20, 44 Stat. 1436.)

### § 921. Review of compensation orders

#### (a) Effectiveness and finality of orders

A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this title, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subsection (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

#### (b) Benefits Review Board; establishment; members; chairman; quorum; voting; questions reviewable; record; conclusiveness of findings; stay of payments; remand

(1) There is hereby established a Benefits Review Board which shall be composed of five 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. The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board.

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

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

(5) Notwithstanding paragraphs (1) through (4), upon application of the Chairman of the Board, the Secretary may designate up to four Department of Labor administrative law judges to serve on the Board temporarily, for not more than one year. The Board is authorized to delegate to panels of three members any or all of the powers which the Board may exercise. Each such panel shall have no more than one temporary member. Two members shall constitute a quorum of a panel. Official adjudicative action may be taken only on the affirmative vote of at least two members of a panel. Any party aggrieved by a decision of a panel of the Board may, within thirty days after the date of entry of the decision, petition the entire permanent Board for review of the panel's decision. Upon affirmative vote of the majority of the permanent members of the Board, the petition shall be granted. The Board shall amend its Rules of Practice to conform with this paragraph. Temporary members, while serving as members of the Board, shall be compensated at the same rate of compensation as regular members.

#### (c) Court of appeals; jurisdiction; persons entitled to review; petition; record; determination and enforcement; service of process; stay of payments

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. 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 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.

**(d) District court; jurisdiction; enforcement of orders; application of beneficiaries of awards or deputy commissioner; process for compliance with orders**

If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the United States District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

**(e) Institution of proceedings for suspension, setting aside, or enforcement of compensation orders**

Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this title.

(Mar. 4, 1927, ch. 509, §21, 44 Stat. 1436; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 92-576, §15(a), (b), Oct. 27, 1972, 86 Stat. 1261, 1262; Pub. L. 95-251, §2(a)(10), Mar. 27, 1978, 92 Stat. 183; Pub. L. 98-426, §15, Sept. 28, 1984, 98 Stat. 1649.)

#### Editorial Notes

##### CODIFICATION

As originally enacted, subsec. (d) contained a reference to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia".

##### AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-426, §15(1), (2), substituted "five" for "three", and inserted "The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board."

Subsec. (b)(2). Pub. L. 98-426, §15(3), substituted "three" for "two" wherever appearing.

Subsec. (b)(5). Pub. L. 98-426, §15(4), added par. (5).

1978—Subsec. (b)(4). Pub. L. 95-251 substituted "administrative law judge" for "hearing examiner".

1972—Subsec. (b). Pub. L. 92-576, §15(a), added subsec. (b). Former provisions of subsec. (b) for injunction proceedings to suspend or set aside a compensation order by a party in interest against a deputy commissioner in Federal district court for judicial district where injury occurred superseded by subsec. (c) of this section and former provisions of such subsec. (b) respecting service of process and stay of payments, except for the procedural requirement of an interlocutory injunction to the

court and hearing on at least three days' notice to the parties in interest and the deputy commissioner, incorporated in subsec. (c) of this section.

Subsecs. (c) to (e). Pub. L. 92-576, §15(a), (b), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

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##### REVIEW OF DECISIONS MADE BY OR PENDING BEFORE BENEFITS REVIEW BOARD

Pub. L. 108-447, div. F, title I, Dec. 8, 2004, 118 Stat. 3121, which provided in part that no funds made available by div. F were to be used by the Solicitor of Labor or the Secretary of Labor to review certain decisions made by or pending before the Benefits Review Board under the Longshore and Harbor Workers' Compensation Act, and deemed such decisions pending review by the Board for more than 1 year to be affirmed by and the final order of the Board for purposes of obtaining review in the United States courts of appeals, was from the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2005, and was not repeated in subsequent appropriations acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108-199, div. E, title I, Jan. 23, 2004, 118 Stat. 234.

Pub. L. 108-7, div. G, title I, Feb. 20, 2003, 117 Stat. 306.

Pub. L. 107-116, title I, Jan. 10, 2002, 115 Stat. 2184.

Pub. L. 106-554, §1(a)(1) [title I], Dec. 21, 2000, 114 Stat. 2763, 2763A-10.

Pub. L. 106-113, div. B, §1000(a)(4) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A-224.

Pub. L. 105-277, div. A, §101(f) [title I], Oct. 21, 1998, 112 Stat. 2681-337, 2681-345.

Pub. L. 105-78, title I, Nov. 13, 1997, 111 Stat. 1475.

Pub. L. 104-208, div. A, title I, §101(e) [title I], Sept. 30, 1996, 110 Stat. 3009-233, 3009-241.

Pub. L. 104-134, title I, §101(d) [title I], Apr. 26, 1996, 110 Stat. 1321-211, 1321-218; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

#### §921a. Appearance of attorneys for Secretary, deputy commissioner, or Board

Attorneys appointed by the Secretary shall represent the Secretary, the deputy commissioner, or the Board in any court proceedings under section 21 [33 U.S.C. 921] or other provisions of this Act<sup>1</sup> except for proceedings in the Supreme Court of the United States.

(May 4, 1928, ch. 502, 45 Stat. 490; June 25, 1948, ch. 646, §1, 62 Stat. 909; Pub. L. 92-576, §16, Oct. 27, 1972, 86 Stat. 1262.)

#### Editorial Notes

##### REFERENCES IN TEXT

This Act, referred to in text, probably should have been a reference to act Mar. 4, 1927, ch. 509, 44 Stat. 1424, known as the Longshore and Harbor Workers' Compensation Act, which is classified generally to this chapter. This section was not enacted as part of that Act, see Codification note below. For complete classi-

<sup>1</sup> See References in Text note below.