

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Create a Workers' Compensation Board Appeals Process**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 39-A MRSA §102, sub-§2-A** is enacted to read:

**2-A. Appeal board.** “Appeal board” means the board when acting to hear and decide an appeal of a hearing officer’s decision as provided in section 320-A.

**Sec. 2. 39-A MRSA §102, sub-§12-B** is enacted to read:

**12-B. Hearing officer.** “Hearing officer” means an individual employed by the board to hold a hearing as provided in this Part.

**Sec. 3. 39-A MRSA §152, sub-§15** is enacted to read:

**15. Appeal board.** The board shall serve as the appeal board to hear and decide an appeal of a decision made by a hearing officer as provided in section 320-A. An appeal decision must be determined by majority vote of the appeal board.

**Sec. 4. 39-A MRSA §213, sub-§1,** as amended by PL 2003, c. 52, §1, is further amended to read:

**1. Benefit and duration.** While the incapacity for work is partial, the employer shall pay the injured employee a weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the after-tax average weekly wage that the injured employee is able to earn after the injury, but not more than the maximum benefit under section 211. Compensation must be paid for the duration of the disability if the employee's permanent impairment, determined according to subsection 1-A and the impairment guidelines adopted by the board pursuant to section 153, subsection 8 resulting from the personal injury is in excess of 15% to the body. In all other cases an employee is not eligible to receive compensation under this section after the employee has received 260 weeks of compensation under section 212, subsection 1, this section or both. The board may in the exercise of its discretion extend the duration of benefit entitlement beyond 260 weeks in cases involving extreme financial hardship due to inability to return to gainful employment. This authority may be delegated by the board, on a case-by-case basis, to a hearing officer or a panel of 3 hearing officers. Decisions made under this subsection must be made expeditiously. A decision under this subsection made by a hearing officer or a panel of 3 hearing officers may not be appealed to the board, servng as the appeal board, under section 320, ~~but may be appealed pursuant to section 322320-A.~~

**Sec. 5. 39-A MRSA §320,** as amended by PL 2005, c. 25, §1, is repealed.

**Sec. 6. 39-A MRSA §320-A** is enacted to read:

### **§ 320-A. Appeal to appeal board**

**1. Appeal.** If a party is not satisfied with the final decision of the hearing officer pursuant to section 318, the party may appeal the decision to the appeal board. The appeal must be submitted within 30 days after receipt of notice of the filing of the decision by the hearing officer, although the appeal board may extend the time limit for good cause. If no appeal is submitted, the hearing officer may request that the appeal board review a decision of the hearing officer if the decision involves an issue that is of significance to the operation of the workers' compensation system. The request must be made within 45 days of the issuance of the hearing officer's decision and may be accepted by majority vote of a quorum of the appeal board within 60 days after receiving the request for review.

**2. Judicial appeal.** Any appeal pursuant to section 322 must be from the decision of the appeal board.

**3. Appeal on record and appeal documents.** In considering an appeal, the appeal board, except as otherwise provided in this section, shall consider only the record of the proceedings before the hearing officer, including any documents or testimony presented to the hearing officer. The appeal board may also consider any oral or written arguments that a party may wish to make in support of or opposition to the appeal.

**4. Standard of review.** The appeal board may overrule a decision of the hearing officer only if the appeal board determines the decision is arbitrary and capricious, inconsistent with statute or inconsistent with the policies adopted by the board.

**5. New information.** If a party wishes to offer on appeal new information not presented to the hearing officer, the appeal board shall determine whether the new information is appropriate for consideration in connection with the case. If the appeal board determines that the new information is appropriate for consideration, it shall return the matter to the hearing officer and order that the hearing officer reconsider the case in light of the new information.

**6. Decision.** Upon a vote of a majority of the appeal board, the appeal board shall issue a written decision affirming, reversing or modifying the hearing officer's decision. The written decision of the appeal board must be filed with the board and mailed to the parties or their counsel. The appeal board shall complete its decision within 60 days of the filing of the appeal or request with the appeal board. The decision of the appeal board is appealable to the Law Court as provided in section 322.

**Sec. 7. 39-A MRSA §322,** as enacted by PL 1991, c. 885, Pt. A, §8 and as affected by §§9 to 11, is amended to read:

## **§ 322. Appeal from decision of appeal board**

**1. Appeals.** Any party in interest may present a copy of the decision of ~~a hearing officer or a decision of the appeal board, if the board has reviewed a decision pursuant to section 320~~320-A, to the clerk of the Law Court within 20 days after receipt of notice of the filing of the decision by the ~~hearing officer or the appeal board.~~ Within 20 days after the copy is filed with the Law Court, the party seeking

review by the Law Court shall file a petition seeking appellate review with the Law Court that sets forth a brief statement of the facts, the error or errors of law that are alleged to exist and the legal authority supporting the position of the appellant.

**2. Procedures.** The Law Court shall establish and publish procedures for the review of petitions for appellate review of decisions of the appeal board.

**3. Discretionary appeal; action.** Upon the approval of 3 or more members of a panel consisting of no fewer than 5 Justices of the Law Court, the petition for appellate review may be granted. If the petition for appellate review is denied, the decision of the appeal board is final. The petition must be considered on written briefs only.

If the petition for appellate review is granted, the clerk of the Law Court shall notify the parties of the briefing schedule consistent with the Maine Rules of Civil Procedure and in all respects the appeal before the Law Court must be treated as an appeal in an action in which equitable relief has been sought, except that there may be no appeal upon findings of fact. The Law Court may, after due consideration, reverse, modify or affirm any decision of the appeal board.

## SUMMARY

This bill provides for the appeal of decisions of hearing officers on workers' compensation claims to the Workers' Compensation Board, together with procedures.