

House Bill 2717

Sponsored by COMMITTEE ON BUSINESS, LABOR AND CONSUMER AFFAIRS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires that postponed workers' compensation hearing be held no later than 120 days after initial hearing date.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to postponement of workers' compensation hearings; creating new provisions; amending
3 ORS 656.283; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 656.283 is amended to read:

6 656.283. (1) Subject to ORS 656.319, any party or the Director of the Department of Consumer
7 and Business Services may at any time request a hearing on any matter concerning a claim, except
8 matters for which a procedure for resolving the dispute is provided in another statute, including
9 ORS 656.245, 656.248, 656.260, 656.327 and subsection (2) of this section.

10 (2)(a) The Legislative Assembly finds that vocational rehabilitation of injured workers requires
11 a high degree of cooperation between all of the participants in the vocational assistance process.
12 Based on this finding, the Legislative Assembly concludes that disputes regarding eligibility for and
13 extent of vocational assistance services should be resolved through nonadversarial procedures to the
14 greatest extent possible consistent with constitutional principles. The director is hereby charged
15 with the duty of creating a procedure for resolving vocational assistance disputes in the manner
16 provided in this subsection.

17 (b) If a worker is dissatisfied with an action of the insurer or self-insured employer regarding
18 vocational assistance, the worker must apply to the director for administrative review of the matter.
19 Such application must be made not later than the 60th day after the date the worker was notified
20 of the action. The director shall complete the review within a reasonable time. If the worker's dis-
21 satisfaction is resolved by agreement of the parties, the agreement shall be reduced to writing, and
22 the director and the parties shall review the agreement and either approve or disapprove it. If the
23 worker's dissatisfaction is not resolved by agreement of the parties, the director shall resolve the
24 matter in a written order containing findings of fact and conclusions of law. The order shall be
25 based on a record sufficient to permit review under paragraph (c) of this subsection. For purposes
26 of this subsection, the term "parties" does not include a noncomplying employer.

27 (c) Director approval of an agreement resolving a vocational assistance matter shall be subject
28 to reconsideration by the director under limitations prescribed by the director, but shall not be
29 subject to review by any other forum. When the director issues an order after review under para-
30 graph (b) of this subsection, the order shall be subject to review only by the director. At the con-
31 tested case hearing, the decision of the director's administrative review shall be modified only if it:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

- 1 (A) Violates a statute or rule;
- 2 (B) Exceeds the statutory authority of the agency;
- 3 (C) Was made upon unlawful procedure; or
- 4 (D) Was characterized by abuse of discretion or clearly unwarranted exercise of discretion.

5 (d) An appeal of the director’s administrative review under paragraph (b) of this subsection must
 6 be made within 60 days of the review issue date. Judicial review of the order shall be pursuant to
 7 ORS chapter 183.

8 (3) A request for hearing may be made by any writing, signed by or on behalf of the party and
 9 including the address of the party, requesting the hearing, stating that a hearing is desired, and
 10 mailed to the Workers’ Compensation Board.

11 (4)(a) The board shall refer the request for hearing to an Administrative Law Judge for deter-
 12 mination as expeditiously as possible. The hearing shall be scheduled for a date not more than 90
 13 days after receipt by the board of the request for hearing. The hearing [*shall*] **may** not be
 14 postponed:

15 (A) Except in extraordinary circumstances beyond the control of the requesting party; **and**

16 (B) **For more than 120 days after the original hearing date.**

17 (b) When a hearing set pursuant to paragraph (a) of this subsection is postponed because of the
 18 need to join one or more potentially responsible employers or insurers, the assigned Administrative
 19 Law Judge shall reschedule the hearing as expeditiously as possible after all potentially responsible
 20 employers and insurers have been joined in the proceeding and the medical record has been fully
 21 developed. The board shall adopt rules for hearings on claims involving one or more potentially re-
 22 sponsible employers and insurers that:

23 (A) Require the parties to participate in any prehearing conferences required to expedite the
 24 hearing; and

25 (B) Authorize the Administrative Law Judge conducting the hearing to:

26 (i) Establish a prehearing schedule for investigation of the claim, including but not limited to
 27 the interviewing of the claimant;

28 (ii) Make prehearing rulings necessary to promote full discovery and completion of the medical
 29 record required for determination of the issues arising from the claim; and

30 (iii) Specify what is required of the claimant to meet the obligation to reasonably cooperate with
 31 the investigation of claims.

32 (c) Nothing in paragraph (b) of this subsection alters the obligation of an insurer or self-insured
 33 employer to accept or deny a claim for compensation as required under this chapter.

34 (d) If a hearing has been postponed in accordance with paragraph (b) of this subsection, the di-
 35 rector may not consider the timeliness of a denial issued in the claim that is the subject of the
 36 hearing for the purpose of imposing a penalty against an insurer or self-insured employer that is
 37 potentially responsible for the claim.

38 (5) At least 10 days’ prior notice of the time and place of hearing shall be given to all parties
 39 in interest by mail. Hearings shall be held in the county where the worker resided at the time of
 40 the injury or such other place selected by the Administrative Law Judge.

41 (6) A record of all proceedings at the hearing shall be kept but need not be transcribed unless
 42 a party requests a review of the order of the Administrative Law Judge. Transcription shall be in
 43 written form as provided by ORS 656.295 (3).

44 (7) Except as otherwise provided in this section and rules of procedure established by the board,
 45 the Administrative Law Judge is not bound by common law or statutory rules of evidence or by

1 technical or formal rules of procedure, and may conduct the hearing in any manner that will achieve
2 substantial justice. Neither the board nor an Administrative Law Judge may prevent a party from
3 withholding impeachment evidence until the opposing party's case in chief has been presented, at
4 which time the impeachment evidence may be used. Impeachment evidence consisting of medical or
5 vocational reports not used during the course of a hearing must be provided to any opposing party
6 at the conclusion of the presentation of evidence and before closing arguments are presented.
7 Impeachment evidence other than medical or vocational reports that is not presented as evidence
8 at hearing is not subject to disclosure. Evaluation of the worker's disability by the Administrative
9 Law Judge shall be as of the date of issuance of the reconsideration order pursuant to ORS 656.268.
10 Any finding of fact regarding the worker's impairment must be established by medical evidence that
11 is supported by objective findings. The Administrative Law Judge shall apply to the hearing of the
12 claim such standards for evaluation of disability as may be adopted by the director pursuant to ORS
13 656.726. Evidence on an issue regarding a notice of closure that was not submitted at the reconsi-
14 deration required by ORS 656.268 is not admissible at hearing, and issues that were not raised by a
15 party to the reconsideration may not be raised at hearing unless the issue arises out of the recon-
16 sideration order itself. However, nothing in this section shall be construed to prevent or limit the
17 right of a worker, insurer or self-insured employer to present the reconsideration record at hearing
18 to establish by a preponderance of that evidence that the standards adopted pursuant to ORS
19 656.726 for evaluation of the worker's permanent disability were incorrectly applied in the recon-
20 sideration order pursuant to ORS 656.268. If the Administrative Law Judge finds that the claim has
21 been closed prematurely, the Administrative Law Judge shall issue an order rescinding the notice
22 of closure.

23 (8) Any party shall be entitled to issuance and service of subpoenas under the provisions of ORS
24 656.726 (2)(c). Any party or representative of the party may serve such subpoenas.

25 (9) After a party requests a hearing and before the hearing commences, the board, by rule, may
26 require the requesting party, if represented by an attorney, to notify the Administrative Law Judge
27 in writing that the attorney has conferred with the other party and that settlement has been
28 achieved, subject to board approval, or that settlement cannot be achieved.

29 **SECTION 2. The amendments to ORS 656.283 by section 1 of this 2005 Act apply to re-**
30 **quests for hearing made on or after the effective date of this 2005 Act.**

31 **SECTION 3. This 2005 Act being necessary for the immediate preservation of the public**
32 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
33 **on its passage.**

34