

LEGISLATIVE BILL 18

Approved by the Governor May 20, 1983

Introduced by Kilgarrin, 7

AN ACT to amend sections 48-125, 48-152, 48-156, 48-162, 48-172, and 48-179, Reissue Revised Statutes of Nebraska, 1943, and section 48-153, Revised Statutes Supplement, 1982, relating to workmen's compensation; to change provisions relating to the procedure for payment of awards; to change provisions relating to attorney's fees; to increase the number of judges of the Nebraska Workmen's Compensation Court; to provide for additional powers; to allow certain costs as prescribed; to change provisions relating to the rehearing procedure; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-125. [1] Except as hereinafter provided, all amounts of compensation payable under the provisions of this act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death; PROVIDED, fifty per cent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability. Whenever the employer refuses payment, or when the employer neglects to pay compensation for thirty days after injury, and proceedings are held before the compensation court, a reasonable attorney's fee shall be allowed the employee by the court in all cases when the employee receives an award. In the event if the employer files an application for a rehearing before the compensation court en banc from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the compensation court sitting en banc may shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such rehearing, and the Supreme Court shall in like manner allow the employee a reasonable sum

as attorney's fees for the proceedings in that court. If the employee files an application for a rehearing before the compensation court from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an application for a rehearing before the compensation court from an award of a judge of the compensation court where the amount of compensation due is disputed and obtains an increase in the amount of such award, the compensation court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such rehearing, and the Supreme Court may in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in such court. A reasonable attorney's fee allowed pursuant to this section shall not affect or diminish the amount of the award.

(2) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, at a rate equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. Interest shall apply only to those weekly compensation benefits awarded which have accrued at the time payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

Sec. 2. That section 48-152, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-152. Recognizing that (1) industrial relations between employers and employees within the State of Nebraska are affected with a vital public interest, (2) that an impartial and efficient administration of the Nebraska Workmen's Compensation Act is essential to the prosperity and well-being of the state, and (3) that suitable laws should be enacted for the establishing and for the preservation of such an administration of the said act, there is hereby created, pursuant to the provisions of Article V, section 1, of the Constitution of the State of Nebraska, a court, consisting of ~~five~~ six judges, to be selected or retained in office in accordance with the provisions of Article V, section 21, of the Constitution of the State of Nebraska and to be known as the Nebraska Workmen's Compensation Court, which court shall have authority to administer and enforce all of the provisions of the Nebraska Workmen's Compensation Act, and any amendments

thereof except such as are committed to the courts of appellate jurisdiction.

Sec. 3. That section 48-153, Revised Statutes Supplement, 1982, be amended to read as follows:

48-153. The Nebraska Workmen's Compensation Court shall consist of five six judges. Judges holding office on August 30, 1981, shall continue in office until expiration of their respective terms of office and thereafter for an additional term which shall expire on the first Thursday after the first Tuesday in January immediately following the first general election at which they are retained in office after August 30, 1981. Their right to continue in office shall be determined in the manner provided in sections 24-813 to 24-818, and the terms of office thereafter shall be for six years beginning on the first Thursday after the first Tuesday in January immediately following their retention at such election. In case of a vacancy occurring in the court, the same shall be filled in accordance with the provisions of Article V, section 21, of the Constitution of the State of Nebraska and the right of any judge so appointed to continue in office shall be determined in the manner provided in sections 24-813 to 24-818. All such judges shall hold office until their successors are appointed and qualified, or until death, voluntary resignation, or removal for cause. No judge of the Nebraska Workmen's Compensation Court shall, during his or her tenure in office as judge, hold any other office or position of profit, pursue any other business or avocation inconsistent or which interferes with his or her duties as such judge, or serve on or under any committee of any political party. The judges of such court shall reside in Lancaster County, Nebraska, unless, for the convenience of the court, they are permitted to reside elsewhere by a majority vote of the court, but no such judge shall be deemed thereby to have lost his or her residence at the place from which he or she was selected unless he or she so chooses.

Sec. 4. That section 48-156, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-156. A majority of the judges of the Nebraska Workmen's Compensation Court shall constitute a quorum to adopt rules and regulations, as provided in sections 48-163 and 48-164, to transact business, except where the statute or a rule adopted by the court permits one member thereof to act, and three judges shall constitute a quorum for the rehearing of any disputed claim for compensation. The act or decision of a majority of the judges constituting such quorum shall in all such cases be deemed the act or decision of the court.

Sec. 5. That section 48-162, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-162. The Nebraska Workmen's Compensation Court, or any judge thereof, is authorized and empowered to examine under oath or otherwise any person, employee, employer, agent, superintendent, foreman, or officer of any copartnership or corporation, any officer of any domestic insurance company, any agent of any foreign insurance company, or any medical practitioner, † to issue subpoenas for the appearance of witnesses and the production of books and papers, to solemnize marriages, and administer oaths with like effect as is done in other courts of law in this state. In the examination of any witness and in requiring the production of books, papers, and other evidence, the compensation court shall have and exercise all of the powers of a judge, magistrate, or other officer in the taking of depositions or the examination of witnesses, including the power to enforce his or her orders by commitment for refusal to answer or for the disobedience of any such order.

Sec. 6. That section 48-172, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-172. Each applicant for an order or an award by the Nebraska Workmen's Compensation Court shall pay all the expense of his own making; Provided, that there There shall be no filing fees charged by the court, and that the Nebraska Workmen's Compensation Court, court may at its discretion assess the costs of the applicant or applicants against the respondent or respondents as in like manner done in other courts of the state: When a reasonable attorney's fee is allowed the employee against the employer as provided in section 48-125, the court shall further assess against the employer as costs of the employee, the cost of depositions if admitted into evidence, and may further assess against the employer the fees and mileage for necessary witnesses attending the proceedings at the instance of the employee. Both the necessity for the witness and the reasonableness of the fees shall be approved by the court. Such witnesses shall be reimbursed for their necessary mileage at the rate provided in section 84-106.03 for state employees.

Sec. 7. That section 48-179, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-179. Either party at interest who refuses to accept the findings, order, award, or judgment of the court on the original hearing may, within fourteen days after the date thereof, file with the Nebraska Workmen's Compensation Court an application for a rehearing before

the court sitting en banc, plainly stating the errors on which such party relies for reversal or modification. Such party shall at the same time file with the court copies of such application for the other party or parties at interest. The court shall then immediately serve upon such other party or parties by mail or otherwise, as elsewhere herein provided, a copy of such application for rehearing, and within thirty days thereafter shall proceed to hear said the cause de novo within thirty days thereafter, except that when the parties submit to a settlement conference, as prescribed and directed by the court, the court shall hear the cause within forty-five days thereafter unless a settlement is reached. A shorthand record or tape recording shall be made of all testimony and evidence submitted in such rehearing proceedings. The hearing rehearing by the court shall be held in Lancaster County, Nebraska, or in any other county in the state at the discretion of the court. Within fourteen days after such hearing rehearing the court shall make its findings, order, award, or judgment, determining the issues in said cause. Upon the joint stipulation of the parties to dismiss, the court may dismiss such an application without a rehearing.

Sec. 8. That original sections 48-125, 48-152, 48-156, 48-162, 48-172, and 48-179, Reissue Revised Statutes of Nebraska, 1943, and section 48-153, Revised Statutes Supplement, 1982, are repealed.