

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2753

By Committee on Commerce and Labor

1-27

10 AN ACT concerning workers compensation; relating to closure of claims;
11 amending K.S.A. 2005 Supp. 44-523 and repealing the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 44-523 is hereby amended to read as
15 follows: 44-523. (a) The director, administrative law judge or board shall
16 not be bound by technical rules of procedure, but shall give the parties
17 reasonable opportunity to be heard and to present evidence, insure the
18 employee and the employer an expeditious hearing and act reasonably
19 without partiality.

20 (b) Whenever a party files an application for hearing pursuant to
21 K.S.A. 44-534 and amendments thereto, the matter shall be assigned to
22 an administrative law judge for hearing and the administrative law judge
23 shall set a terminal date to require the claimant to submit all evidence in
24 support of the claimant's claim no later than 30 days after the first full
25 hearing before the administrative law judge and to require the respondent
26 to submit all evidence in support of the respondent's position no later
27 than 30 days thereafter. An extension of the foregoing time limits shall
28 be granted if all parties agree. An extension of the foregoing time limits
29 may also be granted:

30 (1) If the employee is being paid temporary or permanent total dis-
31 ability compensation;

32 (2) for medical examination of the claimant if the party requesting
33 the extension explains in writing to the administrative law judge facts
34 showing that the party made a diligent effort but was unable to have a
35 medical examination conducted prior to the submission of the case by the
36 claimant but then only if the examination appointment was set and notice
37 of the appointment sent prior to submission by the claimant; or

38 (3) on application for good cause shown.

39 (c) When all parties have submitted the case to an administrative law
40 judge for an award, the administrative law judge shall issue an award
41 within 30 days. The administrative law judge shall not stay a decision due
42 to the absence of a submission letter. When the award is not entered in
43 30 days, any party to the action may notify the director that an award is

1 not entered and the director shall assign the matter to an assistant director
2 or to a special administrative law judge who shall enter an award forthwith
3 based on the evidence in the record, or the director, on the director's
4 own motion, may remove the case from the administrative law judge who
5 has not entered an award within 30 days following submission by the party
6 and assign it to an assistant director or to a special administrative law
7 judge for immediate decision based on the evidence in the record.

8 (d) Not less than 10 days prior to the first full hearing before an
9 administrative law judge, the administrative law judge shall conduct a
10 prehearing settlement conference for the purpose of obtaining stipula-
11 tions from the parties, determining the issues and exploring the possibility
12 that the parties may resolve those issues and reach a settlement prior to
13 the first full hearing.

14 (e) (1) If a party or a party's attorney believes that the administrative
15 law judge to whom a case is assigned cannot afford that party a fair hearing
16 in the case, the party or attorney may file a motion for change of admin-
17 istrative law judge. A party or a party's attorney shall not file more than
18 one motion for change of administrative law judge in a case. The admin-
19 istrative law judge shall promptly hear the motion informally upon reason-
20 able notice to all parties who have appeared in the case. Notwithstand-
21 ing the provisions of K.S.A. 44-552, and amendments thereto, the
22 administrative law judge shall decide, in the administrative law judge's
23 discretion, whether or not the hearing of such motion shall be taken down
24 by a certified shorthand reporter. If the administrative law judge dis-
25 qualifies the administrative law judge's self, the case shall be assigned to
26 another administrative law judge by the director. If the administrative law
27 judge refuses to disqualify the administrative law judge's self, the party
28 seeking a change of administrative law judge may file in the district court
29 of the county in which the accident occurred the affidavit provided in
30 subsection (e)(2). If an affidavit is to be filed in the district court, it shall
31 be filed within 10 days.

32 (2) If a party or a party's attorney files an affidavit alleging any of the
33 grounds specified in subsection (e)(3), the chief judge shall at once de-
34 termine, or refer the affidavit to another district court judge for prompt
35 determination of, the legal sufficiency of the affidavit. If the affidavit is
36 filed in a district court in which there is no other judge who is qualified
37 to hear the matter, the chief judge shall at once notify the departmental
38 justice for the district and request the appointment of another district
39 judge to determining the legal sufficiency of the affidavit. If the affidavit
40 is found to be legally sufficient, the district court judge shall order the
41 director to assign the case to another administrative law judge or to an
42 assistant director.

43 (3) Grounds which may be alleged as provided in subsection (e)(2)

1 for change of administrative law judge are that:

2 (A) The administrative law judge has been engaged as counsel in the
3 case prior to the appointment as administrative law judge.

4 (B) The administrative law judge is otherwise interested in the case.

5 (C) The administrative law judge is related to either party in the case.

6 (D) The administrative law judge is a material witness in the case.

7 (E) The party or party's attorney filing the affidavit has cause to be-
8 lieve and does believe that on account of the personal bias, prejudice or
9 interest of the administrative law judge such party cannot obtain a fair
10 and impartial hearing. Such affidavit shall state the facts and the reasons
11 for the belief that bias, prejudice or an interest exists.

12 (4) In any affidavit filed pursuant to subsection (e)(2), the recital of
13 previous rulings or decisions by the administrative law judge on legal
14 issues or concerning prior motions for change of administrative law judge
15 filed by counsel or such counsel's law firm, pursuant to this subsection,
16 shall not be deemed legally sufficient for any believe that bias or prejudice
17 exists.

18 ~~(f) No proceedings for compensation under this section shall be main-~~
19 ~~tained and the claim shall be dismissed if the hearing under this section~~
20 ~~has not been concluded and all evidence submitted within five years from~~
21 ~~the date of the filing of the application for hearing pursuant to K.S.A. 44-~~
22 ~~534, and amendments thereto, unless a timely motion has been filed to~~
23 ~~extend for cause the five-year period.~~

24 **(f) Any claim that has not proceeded to final hearing, a settle-**
25 **ment hearing, or an agreed award under the workers compensa-**
26 **tion act within five years from the date of filing an application for**
27 **hearing pursuant to K.S.A. 44-534, and amendments thereto, shall**
28 **be dismissed by the administrative law judge for lack of prosecu-**
29 **tion. The administrative law judge may grant an extension for good**
30 **cause shown, which shall be conclusively presumed in the event**
31 **that the claimant has not reached maximum medical improvement,**
32 **provided such motion to extend is filed prior to the five year lim-**
33 **itation provided for herein. This section shall not affect any future**
34 **benefits which have been left open upon proper application by an**
35 **award or settlement.**

36 Sec. 2. K.S.A. 2005 Supp. 44-523 is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after its
38 publication in the statute book.