

## No. 12

## AN ACT

## SB 902

Amending the act of June 2, 1915 (P.L.736), entitled, as amended, "An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties," further providing for extension of the Statute of Limitations in certain cases and for procedure generally and providing for certain assessments on insurers.

Workmen's compensation was first enacted in this Commonwealth in 1915, following adoption of an amendment to the Constitution of Pennsylvania that year which authorized the General Assembly to enact laws requiring the payment of "reasonable compensation for injuries to employes arising in the course of their employment regardless of fault of employer or employe, and fixing the basis of ascertainment and maximum and minimum limits" of such compensation. The need for the constitutional amendment was because the idea of liability without fault and the idea of setting limits on the amount that can be recovered in cases of liability based upon fault were concepts unknown to the fundamental and common law at that time. The effects of the law enacted under this special constitutional provision (now Article III, section 18 of the Constitution of Pennsylvania of 1968) have been (1) to impose liability for compensation on the employer, without regard to negligence, and require that payment be insured, (2) to impose limits upon the amount of such compensation irrespective of negligence on the part of the victim's employer, and (3) to divest the covered employe and his survivors of all other legal rights to damages or any other form or method of recovery from the employer for injury or death occurring in the course of employment.

When workmen's compensation was enacted more than half a century ago, it was described as legislation in advance of its time. Today we find that time has overtaken this legislation and that substantial reform is necessary in the public interest.

Statutory limits on the amount of compensation payable for wage loss resulting from work-connected disabilities are so low that they prevent the majority of injury victims from receiving reasonable indemnity for their injuries and defeat the declared purpose of the law, namely to compensate injury victims to the extent of two-thirds of their wage loss. Similarly, restrictions on compensation for medical, surgical and hospital expenses keep the system from operating fairly and humanely.

Of even greater concern are deficiencies in the workmen's compensation laws with respect to the procedures for processing work-connected injury cases and payment of compensation due. We find that notwithstanding that the Department of Labor and Industry has been

charged with responsibility for enforcing the law and regulating its administration by insurers and self-insurers, the act fails to equip the department with essential powers and mechanisms to require observance of reasonable time standards in processing and payment operations, and totally omits any provision for the department to hear and determine, even in the first instance, the entitlement of employes or their dependents where entitlement is contested, or as more frequently occurs, where compensation is withheld for unexplained reasons.

Accordingly, the General Assembly declares that the purpose of the amendments added by this amending act to The Pennsylvania Workmen's Compensation Act is to correct these procedural deficiencies and assure the full payment of compensation when due.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 309, act of June 2, 1915 (P.L.736), known as "The Pennsylvania Workmen's Compensation Act," reenacted and amended June 21, 1939 (P.L.520), amended May 14, 1949 (P.L.1369) and February 28, 1956 (P.L.1120), is amended to read:

Section 309. Wherever in this article the term "wages" is used, it shall be construed to mean the average weekly wages of the employe, ascertained *in accordance with rules and regulations of the department* as follows:

(a) If at the time of the accident the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(b) If at the time of the accident the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve and divided by fifty-two;

(c) If at the time of the accident the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two;

(d) If at the time of the accident the wages are fixed by the day, hour, or by the output of the employe, the average weekly wage shall be the wage most favorable to the employe, computed by dividing by thirteen the total wages of said employe earned in the employ of the employer in the first, second, third, or fourth period of thirteen consecutive calendar weeks in the fifty-two weeks immediately preceding the accident, or in case the employe receives wages, monthly or semi-monthly, by dividing by thirteen the total wages of said employe earned in the employ of the employer in the first, second, third, or fourth period of three consecutive calendar months in the year immediately preceding the accident;

If the employe has been in the employ of employer less than thirteen calendar weeks (or three calendar months, if the employe receives wages monthly or semi-monthly) immediately preceding the accident, his

average weekly wage shall be computed under the foregoing paragraph, taking "total wages" for such purpose to be the amount he would have earned had he been so employed by employer the full thirteen calendar weeks (or three calendar months) immediately preceding the accident and had worked, when work was available to other employes in a similar occupation, unless it be conclusively shown that by reason of exceptional causes such methods of computation does not ascertain fairly the "total wages" of employe so employed less than thirteen calendar weeks (or three calendar months);

(e) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth of the total wages which the employe has earned from all occupations during the twelve calendar months immediately preceding the accident, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not ascertain fairly the earnings of the employe, in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly earnings.

The terms "average weekly wage" and "total wages," as used in this section, shall include board and lodging received from the employer, and **[when so received, the board shall be rated at two dollars per day if more than one meal is served, and one dollar per day if only one meal is served, and lodging shall be rated at one dollar and fifty cents per day. In]** *in* employments in which employes customarily receive not less than one-third of their remuneration in tips or gratuities not paid by the employer, gratuities shall be added to the wages received **[at the rate of two dollars per day,]** but such terms shall not include amounts deducted by the employer under the contract of hiring for labor furnished or paid for by the employer and necessary for the performance of such contract by the employe, nor shall such terms include deductions from wages due the employer for rent and supplies necessary for the employe's use in the performance of his labor.

Where the employe is working under concurrent contracts with two or more employers **[and the defendant employer has knowledge of such employment prior to the accident]**, his wages from all such employers shall be considered as if earned from the employer liable for compensation.

If under clauses (a), (b), (c), (d) and (e) of this section, the amount determined is less than if computed as follows, this computation shall apply, viz: Divide the total wages earned by the employe during the last two completed calendar quarters with the same employer by the number of days he worked for such employer during such period multiplied by five.

*(f) In no case shall an employe's average weekly wage be less than one-thirteenth of his highest calendar quarter wage amount in the first four of the last five completed calendar quarters immediately preceding the date of his injury, and compensation payments may be commenced on this basis unless other information obtained from the employe or employer establishes a higher weekly wage under this section.*

Section 2. Section 315 of the act, amended February 28, 1956 (P.L.1120), is amended to read:

Section 315. In cases of personal injury all claims for compensation shall be forever barred, unless, within **[sixteen months] two years** after the accident, the parties shall have agreed upon the compensation payable under this article; or unless within **[sixteen months] two years** after the accident, one of the parties shall have filed a petition as provided in article four hereof. In cases of death all claims for compensation shall be forever barred, unless within **[sixteen months] two years** after the death, the parties shall have agreed upon the compensation under this article; or unless, within **[sixteen months] two years** after the death, one of the parties shall have filed a petition as provided in article four hereof. Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of **[sixteen months] two years** from the time of the making of the most recent payment prior to date of filing such petition: Provided, That any payment made under an established plan or policy of insurance for the payment of benefits on account of non-occupational illness or injury *and which payment is identified as not being workmen's compensation* shall not be considered to be payment in lieu of workmen's compensation, and such payment shall not toll the running of the Statute of Limitations. *However in cases of injury resulting from ionizing radiation in which the nature of the injury or its relationship to the employment is not known to the employe, the time for filing a claim shall not begin to run until the employe knows, or by the exercise of reasonable diligence should know, of the existence of the injury and its possible relationship to his employment.*

Section 3. All of Article IV, except sections 421, 424 and 431 of the act; section 410 amended December 28, 1959 (P.L.2034); sections 413, 416, 418, 420, 422, 426 and 434 amended February 28, 1956 (P.L.1120); section 417 amended September 1, 1965 (P.L.431); section 427 amended May 27, 1943 (P.L.691); section 428 amended May 18, 1945 (P.L.671), first and second paragraphs amended December 28, 1959 (P.L.2034), are amended, and said article is also amended by adding new sections, to read:

#### ARTICLE IV PROCEDURE

Section 401. The term "referee," when used in this article, shall mean Workmen's Compensation Referee *of the Department of Labor and Industry, appointed by and subject to the general supervision of the Secretary of Labor and Industry for the purpose of conducting departmental hearings under this act. The secretary may establish different classes of referees.*

*The term "board," when used in this article, shall mean the*

*Workmen's Compensation Appeal Board, a departmental administrative board as provided in sections 202, 207, 503 and 2208 of the act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929," exercising its powers and performing its duties as an appellate board independently of the Secretary of Labor and Industry and any other official of the department.*

The term "fund," when used in this article, shall mean the State Workmen's Insurance Fund of this Commonwealth, *the State-operated insurance carrier from which workmen's compensation insurance policies may be purchased by employers to cover all risks of liability under this act including those declined by private carriers.*

*The terms "insurer" and "carrier," when used in this article, shall mean the State Workmen's Insurance Fund or other insurance carrier which has insured the employer's liability under this act, or the employer in cases of self-insurance.*

The term "employer," when used in this article, shall mean the employer as defined in article one of this act, or his duly authorized agent, or his insurer if such insurer has assumed the employer's liability or the fund if the employer be insured therein.

*Section 401.1. The department shall, in fulfillment of its responsibilities under this act, enforce the time standards and other performance standards herein provided for the prompt processing of injury cases and payment of compensation when due by employers and insurers both upon petition by a party or on its own motion. In any case in which compensation has not been timely paid, or in which notice of denial of compensation has been given, the department shall hear and determine all claim petitions for compensation filed by employes or their dependents. The department shall also hear and determine all petitions by employers or insurers to suspend, terminate, reduce or otherwise modify compensation payments, awards, or agreements and petitions by employes or their dependents to increase, modify or reinstate compensation payments, awards, or agreements. Hearings shall be scheduled forthwith upon receipt of the claim petition or other petition, as the case may be, and determinations thereon shall be made promptly and in conformity with time standards herein or hereunder established. Such hearings shall be conducted by a referee or other hearing officer designated by the secretary.*

*Delays in hearings will be granted according to rules established by the department, and any party who unreasonably delays a hearing will be subject to a penalty as provided in section 435. Subject to the provisions of the act of July 31, 1968 (Act No. 240), known as the "Commonwealth Documents Law," the department shall adopt such rules and regulations as it finds necessary or desirable for the enforcement of this act.*

Section 402. All proceedings before [the board or] any referee shall be

*instituted by claim petition or other petition as the case may be or on the department's own motion, and all appeals to the board, shall be instituted by [petition] appeal addressed to the board. All claim petitions and other petitions and appeals shall be in writing and in the form prescribed by the [board] department.*

Section 403. All petitions, all copies of *notices of compensation payable and* agreements for compensation, and all papers requiring action by the *department and its referees or the board*, shall be mailed or delivered to the department at its principal office.

Section 404. The department shall, immediately upon their receipt, properly file and docket all *claim petitions and other* petitions, *notices of compensation payable*, agreements for compensation, findings of fact [by the board or any referee], awards or disallowances of compensation, or modifications thereof, and all other *decisions*, reports or papers filed with it under the provisions of this act or the rules and regulations of *the department or the board*.

Section 405. Immediately upon *making or* receiving [from the board or any referee] any award or disallowance of compensation, or any modification thereof, or any other decision, the department shall serve a copy thereof on all parties in interest.

Section 406. All notices and copies to which any parties shall be entitled under the provisions of this article shall be served by mail, or in such manner as the [board] *department* shall direct. For the purposes of this article any notice or copy shall be deemed served on the date when mailed, properly stamped and addressed, and shall be presumed to have reached the party to be served; but any party may show by competent evidence that any notice or copy was not received, or that there was an unusual or unreasonable delay in its transmission through the mails. In any such case proper allowance shall be made for the party's failure within the prescribed time to assert any right given him by this act.

The department, the secretary *of the board*, and every referee shall keep a careful record of the date of mailing every notice and copy required by this act to be served on the parties in interest.

*Section 406.1. The employer and insurer shall promptly investigate each injury reported or known to the employer and shall proceed promptly to commence the payment of compensation due either pursuant to an agreement upon the compensation payable or a notice of compensation payable as provided in section 407, on forms prescribed by the department and furnished by the insurer. The first installment of compensation shall be paid not later than the twenty-first day after the employer has notice or knowledge of the employe's disability. Interest shall accrue on all due and unpaid compensation at the rate of ten per centum per annum. Any payment of compensation prior or subsequent to an agreement or notice of compensation payable or greater in amount than provided therein*

*shall, to the extent of the amount of such payment or payments, discharge the liability of the employer with respect to such case.*

*Payments of compensation pursuant to an agreement or notice of compensation payable may be suspended, terminated, reduced or otherwise modified by petition and subject to right of hearing as provided in section 413.*

*If the insurer controverts the right to compensation it shall promptly notify the employe or his dependent, on a form prescribed by the department, stating the grounds upon which the right to compensation is controverted and shall forthwith furnish a copy or copies to the department.*

Section 407. On or after the seventh day after any accident shall have occurred, the employer *or insurer* and employe or his dependents may agree upon the compensation payable to the employe or his dependents under this act; but any agreement made prior to the seventh day after the accident shall have occurred, or permitting a commutation of payments contrary to the provisions of this act, or varying the amount to be paid or the period during which compensation shall be payable as provided in this act, shall be wholly null and void. It shall be unlawful for any employer to accept a receipt showing the payment of compensation when in fact no such payment has been made.

*Where payment of compensation is commenced without an agreement, the employer or insurer shall simultaneously give notice of compensation payable to the employe or his dependent, on a form prescribed by the department, identifying such payments as compensation under this act and shall forthwith furnish a copy or copies to the department as required by rules and regulations. It shall be the duty of the department to examine the notice to determine whether it conforms to the provisions of this act and rules and regulations hereunder.*

All agreements made in accordance with the provisions of this section shall be **[in writing, and]** *on a form prescribed by the department*, signed by all parties in interest, *and a copy or copies thereof forwarded to the department as required by rules and regulations. It shall be the duty of the department to examine the agreement to determine whether it conforms to the provisions of this act and rules and regulations hereunder.*

All *notices of compensation payable and* agreements for compensation and all supplemental agreements for the modification, suspension, reinstatement, or termination thereof, and all receipts executed by any injured employe of whatever age, or by any dependent to whom compensation is payable under section three hundred and seven, and who has attained the age of sixteen years, shall be valid and binding unless modified or set aside as hereinafter provided.

Section 408. All *notices of compensation payable and* agreements

for compensation may be modified, suspended, reinstated, or terminated at any time by [a] *an agreement or supplemental agreement [approved by as the case may be with notice to the department, if the incapacity of an injured employe has increased, decreased, recurred, or temporarily or finally terminated, or if the status of any dependent has changed.*

Section 409. Whenever an agreement or supplemental agreement shall be executed between an employer *or his insurer* and an employe or his dependents as provided by this act, such agreement shall be executed in triplicate. [Two copies thereof, signed by all parties in interest, shall be mailed or delivered to the department within thirty days after execution.] It shall be the duty of the department to examine the agreement to determine whether it conforms to the provisions of [section four hundred and seven, to notify the parties thereto of its validity or invalidity, under the aforesaid section, within thirty days after the copies of the agreement have been mailed or delivered to it, and, if the agreement be approved, to send to the employe, together with such notification of its approval, a copy of the agreement: Provided, however, That any payment made in accordance with any agreement prior to the receipt of notice of invalidity shall discharge pro tanto the liability, under article three of this act, of the employer making such payments.] *this act and rules and regulations hereunder. The employer or the insurer as the case may be shall immediately furnish one copy of the agreement to the employe or his dependents and forward another copy or copies to the department as required by rules and regulations. If compensation payments have not already been made, compensation shall be commenced forthwith upon execution of the agreement.*

Section 410. If, after any accident, the employer *or his insurer* and the employe or his dependent, concerned in any accident, shall fail to agree upon the facts thereof [and] *or* the compensation due under this act, the employe or his dependents may present a claim *petition* for compensation to the [board] *department*.

[Whenever any claim for compensation is presented to the board and is finally adjudicated in favor of the claimant, the amounts of compensation actually due at the time the first payment is made after such adjudication shall bear interest at the rate of six per centum per annum from the day such claim is presented, and such interest shall be payable to the same persons as the compensation is payable.]

In case any claimant shall die before the final adjudication of his claim, the amount of compensation due such claimant to the date of death shall be paid to the dependents entitled to compensation, or, if there be no dependents, then to the estate of the decedent.

Whenever any claim for compensation is presented [to the board or a referee] and the injury and accident are not denied, *or are resolved* and the only issue involved is the liability as between the defendant or the carrier or two or more defendants or carriers, the referee [or the board] *of the department to whom the claim in such case is presented* shall forthwith order



payments to be immediately made by the defendants or the carriers in said case. After the *department's* referee, or the board *on appeal*, render a final decision, the payments made by the defendant or carrier not liable in the case shall be awarded or assessed against the defendant or carrier liable in the case, as costs in the proceedings, in favor of the defendant or carrier not liable in the case.

Section 411. Whenever the employer *or his insurer* and the employe or his dependent shall, on or after the seventh day after any accident, agree on *all of* the facts on which a claim for compensation depends, but shall fail to agree on the compensation payable [*thereunder*], they may petition the [*board*] *department* to determine the compensation payable. Such petition shall contain the agreed facts, and shall be signed by all parties in interest. The [*board*] *department or its referee* shall fix a time and place for hearing the petition, and shall notify all parties in interest. As soon as may be after such hearing, the [*board*] *department or its referee* shall award or disallow compensation in accordance with the provisions of this act.

Section 412. If any party shall desire the commutation of future installments of compensation, he shall present a petition therefor to the [*board*] *department to be heard and determined by a referee: Provided, That where there are no more than twenty-five weeks of compensation to be commuted, the insurer or self-insurer may commute such future installments without discount upon furnishing the employe written notice of the commutation on a form prescribed by the department, a copy of which shall be filed immediately with the department.*

Section 413. [*The board, or a referee designated by the board,*] (*a*) *A referee of the department* may, at any time, review and modify or set aside *a notice of compensation payable and* an original or supplemental agreement, *or* upon petition filed by either party with the [*board*] *department*, or in the course of the proceedings under any petition pending before such [*board or*] referee, if it be proved that such *notice of compensation payable or* agreement was in any material respect incorrect.

[*The board, or a*] *A referee designated by the [board,] department* may, at any time, modify, reinstate, suspend, or terminate *a notice of compensation payable*, an original or supplemental agreement or an award *of the department or its referee*, upon petition filed by either party with [*such board*] *the department*, upon proof that the disability of an injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or that the status of any dependent has changed. Such modification, reinstatement, suspension, or termination shall be made as of the date upon which it is shown that the disability of the injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or upon which it is shown that the status of any dependent has changed: *Provided, That, except in the case of eye injuries, no notice of*

*compensation payable*, agreement or award shall be reviewed, or modified, or reinstated, unless a petition is filed with the [board] *department* within two years after the date of the most recent payment of compensation made prior to the filing of such petition. And provided further, That any payment made under an established plan or policy of insurance for the payment of benefits on account of nonoccupational illness or injury *and which payment is identified as not being workmen's compensation* shall not be considered to be payment in lieu of workmen's compensation, and such payment shall not toll the running of the Statute of Limitations: And provided further, That where compensation has been suspended because the employe's earnings are equal to or in excess of his wages prior to the accident that payments under the agreement or award may be resumed at any time during the period for which compensation for partial disability is payable, unless it be shown that the loss in earnings does not result from the disability due to the injury.

The [board or] referee to whom any such petition has been assigned may subpoena witnesses, hear evidence, make findings of fact, and award or disallow compensation, in the same manner and with the same effect and subject to the same right of appeal, as if such petition were an original claim petition.

The filing of a petition to terminate or modify a *notice of compensation payable or a* compensation agreement or award as provided in this section shall operate as a supersedeas, and shall suspend the payment of compensation fixed in the agreement or by the award, in whole or to such extent as the facts alleged in the petition would, if proved, require *only when such petition alleges that the employe has returned to work at his prior or increased earnings or where the petition alleges that the employe has fully recovered and is accompanied by an affidavit of a physician on a form prescribed by the department to that effect which is based upon an examination made within fifteen days of the filing of the petition. In any other case, a petition to terminate or modify a compensation agreement or other payment arrangement or award as provided in this section shall not automatically operate as a supersedeas but may be designated as a request for a supersedeas, which may then be granted at the discretion of the referee hearing the case. A supersedeas shall serve to suspend the payment of compensation in whole or to such extent as the facts alleged in the petition would, if proved, require. The referee hearing the case shall rule on the request for a supersedeas as soon as possible and may approve the request if proof of a change in medical status, or proof of any other fact which would serve to modify or terminate payment of compensation is submitted with the petition. The referee hearing the case may consider any other fact which he deems to be relevant when making the decision on the supersedeas request and the decision shall not be appealable.*

(b) *Any insurer who suspends, terminates or decreases payments of compensation without submitting an agreement or supplemental*

*agreement therefor as provided in section 408, or a final receipt as provided in section 434, or without filing a petition and either alleging that the employe has returned to work at his prior or increased earnings or where the petition alleges that the employe has fully recovered and is accompanied by an affidavit of a physician on a form prescribed by the department to that effect which is based upon an examination made within fifteen days of the filing of the petition or having requested and been granted a supersedeas as provided in this section, shall be subject to penalty as provided in section 435.*

Section 414. Whenever a claim petition or other petition is presented to the **[board, the board] department, the department** shall, by general rules or special order, **[either direct it to be heard by one or more members of the board or]** assign it to a referee for hearing. **[: Provided, however, That petitions presented under sections four hundred and eleven and four hundred and twelve shall be heard by one or more members of the board.]**

The department shall serve upon each adverse party a copy of the petition, together with a notice that such petition will be heard by **[the board or]** the referee to whom it has been assigned (giving his name and address) as the case may be, and, **[if the petition shall have been assigned to a referee,]** shall mail the original petition to such referee, together with copies of the notices served upon the adverse parties.

Section 415. At any time before an award or disallowance of compensation or order has been made by a referee to whom a petition has been assigned, the **[board] department** may order such petition heard before **[it or one or more of its members or may reassign it to]** any other referee. Unless the **[board] department** shall otherwise order, the testimony taken before the original referee shall be considered as though taken before the **[board or]** substituted referee.

Section 416. Within **[twenty] fifteen** days after a copy of any *claim petition or other* petition has been served upon an adverse party, he may file with the **[secretary of the board if the petition has been directed to be heard by the board, or with the] department or its** referee **[if the petition has been assigned to a referee,]** an answer in the form prescribed by the **[board] department.**

Every fact alleged in a claim petition not specifically denied by an answer so filed by an adverse party shall be deemed to be admitted by him. But the failure of any **[adverse]** party or of all of them to deny a fact **[so]** alleged *in any other petition* shall not preclude the **[board or]** referee before whom the petition is heard from requiring, of **[its or]** his own motion, proof of such fact. *If a party fails to file an answer and/or fails to appear in person or by counsel at the hearing without adequate excuse, the referee hearing the petition shall decide the matter on the basis of the petition and evidence presented.*

Section 417. **[As soon as may be after the twelfth day] Within fifteen days** after notice that a petition has been directed to be heard by **[the**

board] *a referee* has been served upon the adverse parties thereof, the [board] *referee* shall fix a time and place for hearing the petition. [If a petition be assigned to a referee, he] *The referee* shall as soon as practicable [thereafter] within the limitations prescribed [by this section] *herein* fix a time and a place for hearing the petition [. The secretary of the board, if the petition has been directed to be heard by the board or by one or more of its members, or the referee to whom the petition has been assigned, shall] *and* serve upon all parties in interest a notice of the time and place of hearing, and shall serve upon the petitioner a copy of any answer of any adverse party. The hearing on any such petition shall be held within [ninety] *thirty-five* days of the filing of the petition.

Section 418. The [board if a petition is directed to be heard by it or by one or more of its members, or the] *referee* to whom a petition is assigned for hearing, may subpoena witnesses, order the production of books and other writings, and hear evidence, *shall make a record of hearings*, and shall make, in writing and as soon as may be after the conclusion of the hearing, such findings of fact, conclusions of law, and award or disallowance of compensation or other order, as the petition and answers and the evidence produced before [it or] him and the provisions of this act shall, in [its or] his judgment, require. The findings of fact made by [the board in any petition heard by it or by one or more of its members or upon a hearing de novo shall be final, except as hereinafter provided, and the findings of fact made by] a referee to whom a petition has been assigned or any question of fact has been referred under the provisions of section four hundred and nineteen shall be final, unless an appeal is taken as provided in this act. [, or unless the board shall, under the provisions of sections four hundred and twenty-five or four hundred and twenty-six of this article, grant a hearing de novo or a rehearing.]

Section 419. The board may [refer] *remand any case involving* any question of fact arising under any [petition, including a petition for commutation heard by it,] *appeal* to a referee to hear evidence and report to the board the testimony taken before him or such testimony and findings of fact thereon as the board may order. The [board] *department* may refer any question of fact arising out of any petition assigned to a referee, to any other referee to hear evidence, and report the testimony so taken thereon to the original referee.

Section 420. The board, *the department* or a referee, if it or he deem it necessary, may, of its or his own motion, either before, during, or after any hearing, make *or cause to be made* an investigation of the facts set forth in the petition or answer *or facts pertinent in any injury under this act*. The board, *department* or referee [with the consent of the board,] may appoint one or more impartial physicians or surgeons to examine the injuries of the plaintiff and report thereon, or [he] may employ the services of such other experts as shall appear necessary to ascertain the facts. The report of any physician, surgeon, or expert appointed by the [board] *department* or by a referee shall be filed with the board or referee, as the case may be, and shall be a part of the record and open to inspection as such.

The board *or referee, as the case may be*, shall fix the compensation of such physicians, surgeons, and experts, which, when so fixed, shall be paid out of the sum appropriated to the Department of Labor and Industry

**[The sum of fifty thousand dollars (\$50,000) is hereby appropriated to the Department of Labor and Industry for compensation payable by the Commonwealth under this section for the biennium one thousand nine hundred fifty-three—one thousand nine hundred fifty-five.**

**The sum of fifty thousand dollars (\$50,000) is hereby appropriated to the Department of Labor and Industry for compensation payable by the Commonwealth under the provisions of this section for the biennium one thousand nine hundred fifty-five—one thousand nine hundred fifty-seven.] for such purpose.**

Section 422. Neither the board nor any of its members nor any referee shall be bound by the **[technical] common law or statutory** rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based **[only]** upon sufficient **[, competent] credible** evidence to justify same.

If any party or witness resides outside of the Commonwealth, or through illness or other cause is unable to testify before the board or a referee, his or her testimony or deposition may be taken, within or without this Commonwealth, in such manner and in such form as the **[board] department** may, by special order or general rule, prescribe. The records kept by a hospital of the medical or surgical treatment given to an employe in such hospital shall be admissible as evidence of the medical and surgical matters stated therein **[, but shall not be conclusive proof of such matters]**.

Where any claim for compensation at issue before a referee involves **[five] twenty-five** weeks or less of disability, either the employe or the employer may submit a certificate by any qualified physician as to the history, examination, treatment, diagnosis and cause of the condition, and **[the] sworn reports by other witnesses as to any other facts and such** statements shall be admissible as evidence of medical and surgical *or other* matters therein stated **[, but such statements and certificates shall not be admissible in any subsequent proceedings] and findings of fact may be based upon such certificates or such reports.**

Where an employer shall have furnished surgical and medical services or hospitalization in accordance with the provisions of subsection (f) of section 306, or where the employe has himself procured them, the employer or employe shall, upon request, in any pending proceeding, be furnished with, or have made available, a true and complete record of the medical and surgical services and hospital treatment, including X rays, laboratory tests, and all other medical and surgical data in the possession or under the control of the party requested to furnish or make available such data.

*The department may adopt rules and regulations governing the conduct of all hearings held pursuant to any provisions of this act, and hearings shall be conducted in accordance therewith, and in such manner as best to ascertain the substantial rights of the parties.*

Section 423. Any party in interest may, within twenty days after notice of a referee's award or disallowance of compensation shall have been served upon him, take an appeal to the board on the ground: (1) that the award or disallowance of compensation is not in conformity with the terms of this act, or that the referee committed any other error of law; (2) that the findings of fact and award or disallowance of compensation **[was unwarranted by sufficient, competent evidence, or was]** *were not supported by credible evidence or were* procured by fraud, coercion, or other improper conduct of any party in interest. The board may, upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.

In any such appeal the board may disregard the findings of fact of the referee, **[and may examine the testimony taken before such referee,]** *if not supported by credible evidence* and if it deem proper may hear other evidence, and may substitute for the findings of the referee such findings of fact as the evidence taken before the referee and the board, as hereinbefore provided, may, in the judgment of the board, require, and may make such disallowance or award of compensation or other order as the facts so founded by it may require.

Section 425. **[Whenever an appeal shall be taken on the ground]** *If on appeal it appears* that the referee's award or disallowance of compensation was **[unwarranted by the evidence, or because of]** *capricious or caused by* fraud, coercion, or other improper conduct by any party in interest, the board may, **[in its discretion,]** grant a hearing de novo before the board, or one or more of its members or **[assign the petition]** *remand the case* for rehearing to any referee **[designated by it or sustain the referee's award or disallowance of compensation]**. If the board shall grant a hearing de novo, it shall fix a time and place for same, and shall notify all parties in interest.

As soon as may be after any hearing **[de novo]** by the board, it shall in writing state **[its]** *the findings of fact, whether those of the referee or its own, which are basic to its decision* and award or disallow compensation in accordance with the provisions of this act.

Section 426. The board, upon petition of any party and upon cause shown, at any time before the **[court of common pleas of any county of this Commonwealth other than Allegheny County, and in Allegheny County before the county court of Allegheny County]** *Commonwealth Court*, to which an appeal has been taken under the provisions of section four hundred and twenty-seven of this article shall have taken final action thereon, may grant a rehearing of any petition upon which the board has made an award or disallowance of compensation or other order or ruling, or upon which the board has sustained or reversed any action of a referee; but such

rehearing shall not be granted more than eighteen months after the board has made such award, disallowance, or other order or ruling, or has sustained or reversed any action of the referee. If the board shall grant a rehearing of any petition from the board's action on which an appeal has been taken to and is pending in, the **[court of common pleas, or in the county court of Allegheny County, as the case may be]** *Commonwealth Court*, under the provisions of section four hundred and twenty-seven of this article, the board shall file in such court a certified copy of its order granting such rehearing, and it shall thereupon be the duty of such court to cause the record of the case to be remitted to the board: Provided, however, That nothing contained in this section shall limit or restrict the right of the board, or a referee **[designated by the board,]** to review, modify, set aside, reinstate, suspend, or terminate, an original or supplemental agreement, or an award in accordance with the provisions of section four hundred thirteen of this article.

Section 427. Any party may appeal from any action of the board on matters of the law to the **[court of common pleas of the county in which the accident occurred or of the county in which the adverse party resides or has a permanent place of business, or, by agreement of the parties, to the court of common pleas of any other county of this Commonwealth: Provided, That no such appeal shall be taken to the court of common pleas of Allegheny County, but in Allegheny County all such appeals shall be taken to the county court of Allegheny County, which shall have exclusive jurisdiction of such appeals]** *Commonwealth Court*. *The board shall be an appellee in every appeal from its decision.* Such appeal must in all cases be brought within twenty days after notice of the action of the board has been served upon such party, unless **[any court of common pleas or the county court of Allegheny County, as the case may be, to which an appeal lies]** *the Commonwealth Court*, shall, upon cause shown, extend the time herein provided for taking the appeal. The party taking the appeal shall, at the time of taking the appeal, serve upon *the board and the adverse party or parties in the proceedings before the board* a written notice thereof, **[setting forth the date of the appeal and the court in which the same is filed, and shall file, either with his notice of appeal, or within thirty days thereafter, such exceptions to the action of the board as he may desire to take, and shall specify the findings of fact, if any, of the board or of the referee sustained by the board, which he alleges to be unsupported by competent evidence]** *and within the said twenty days shall file such exceptions to the action of the board as he may desire to take and serve copies thereof upon the board and such adverse party or parties.*

Upon filing of the notice of an appeal, the prothonotary of the **[court of common pleas or the clerk of the county court of Allegheny County, as the case may be, to which the appeal has been taken]** *Commonwealth Court* shall issue a writ of certiorari directed to the board, commanding it, within ten days after service thereof, to certify to such court its entire record in the matter in which the appeal has been taken. The writ so issued shall be mailed by

the prothonotary [or the clerk of the county court of Allegheny County, as the case may be,] to the [department] *board* at Harrisburg [, together with a copy of the exceptions]. The board shall, within ten days after such service, certify to such court its entire record in the matter in which the appeal has been taken, including the notes of testimony. *A party seeking compensation may proceed in forma pauperis without petitioning for leave to do so.*

*In any appeal to the Commonwealth Court, the scope of review shall be as provided in section 44, act of June 4, 1945 (P.L.1388), known as the "Administrative Agency Law."*

[Any] *The court* [before whom an appeal is pending from any action of the board] may remit the record to the board for more specific findings of fact, if the findings of the board or referee are not, in its opinion, sufficient to enable it to decide the question of law raised by the appeal.

If the [court of common pleas of any county or the county court of Allegheny County, as the case may be,] *Commonwealth Court* shall affirm an award or order of the board or of a referee sustained by the board, fixing the compensation payable under this act, the court shall enter judgment for the total amount stated by the award or order to be payable, whether then due and accrued or payable in future installments. [If such court shall sustain the appellant's exceptions to a finding or findings of fact and reverse the action of the board founded thereon, the court shall remit the record to the board for further hearing and determination, in which the procedure shall be the same as that hereinbefore provided in this article in the case of a petition presented to the board, except that the testimony taken in the original proceedings shall be considered as though taken in such further hearing.

The prothonotary of any court of common pleas or the clerk of the county court of Allegheny County, as the case may be, to which an appeal has been taken from the board shall send to the board a certificate of the judgment of the court as soon as rendered, with a copy of any opinion which may be filed in the case, and, within five days, shall give notice of such judgment, and the date thereof, by registered mail to each attorney-at-law appearing in the case at the address given by the attorney in the pleadings, and, if no attorney-at-law has appeared, by registered mail to the party or parties not represented by counsel. At the end of the period hereinafter allowed for an appeal from the judgment of the court, the record of the board shall be remitted to it by the prothonotary or the clerk of the county court of Allegheny County, as the case may be, unless an appeal shall have been taken to the Superior Court as hereinafter provided. If such appeal shall be taken, the record shall be remitted to the board by the prothonotary or the clerk of the county court of Allegheny County, as the case may be, on its return from the appellate court.]

*If the court reverses or modifies the action of the board, the court may, if necessary, remit the record to the board for further hearing and/or determination, in which case the procedure shall be the same as hereinbefore provided in this article, except that testimony which has already been taken shall be considered part of any further proceedings.*



[Any party may appeal to the Superior Court from the judgment of the court of common pleas or the county court of Allegheny County within thirty days after entry of said judgment, irrespective of the amount involved. Such appeal shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the Superior Court, and the record so certified shall contain all that was before the court of common pleas or the county court of Allegheny County, as the case may be.] Any appeal from the action of the board to [a court of common pleas or the county court of Allegheny County, as the case may be and from it to the Superior Court] *Commonwealth Court and from it to the Supreme Court* shall take precedence over all other civil actions. [The judgment of the Superior Court shall be final, unless an appeal therefrom is allowed as in the case of other judgments of that tribunal.]

Upon the rendition of any judgment in the county court of Allegheny County hereunder, the party to whom such judgment is awarded shall be entitled to file in the office of the prothonotary of Allegheny County a transcript from the docket of the county court, showing the judgment so rendered which judgment shall be entered upon the judgment index of said county in the same manner and with like effect as in the case of other judgments rendered by the county court of Allegheny County.

It is the intention of this act that all appeals from the Workmen's Compensation Board heretofore triable in the court of common pleas of Allegheny County shall henceforth be exclusively triable in the county court of Allegheny County, regardless of the amount of money involved in the appeal.]

*Judgments of the Commonwealth Court may be reviewed by the Supreme Court upon allowance of appeal upon petition of any party filed within thirty days after entry of judgment, in accordance with the provisions of the Appellate Court Jurisdiction Act of 1970. Upon allowance of an appeal, the Supreme Court shall issue a writ of certiorari to the Commonwealth Court which shall forthwith forward the record to the Supreme Court.*

Section 428. Whenever the employer, who has accepted and complied with the provisions of section three hundred five, shall be in default in compensation payments for thirty days or more, the employe or dependents entitled to compensation thereunder may file a certified copy of the agreement and the order of the [board] *department* approving the same or of the award or order with the prothonotary of the court of common pleas of any county, and the prothonotary shall enter the entire balance payable under the agreement, award or order to be payable to the employe or his dependents, as a judgment against the employer or [other party] *insurer* liable under such agreement or award. Where the compensation so payable is for a total and permanent disability, the judgment shall be in the amount of thirty thousand dollars less such amount as the employer shall have actually paid pursuant to such agreement or award. Such judgment shall be a lien against property of the employer or [other party] *insurer* liable under such agreement or award and execution may issue thereon forthwith.

Whenever, after an accident, any employe or his dependents shall have entered into a compensation agreement with an employer, who has not accepted or complied with the provisions of section three hundred five, or shall file a claim petition [**with the board**] against such employer, he may file a certified copy thereof with the prothonotary of the court of common pleas of any county. The prothonotary shall enter the amount stipulated in any such agreement or claimed in any such *claim* petition as judgment against the employer, and where the amount so stipulated or claimed is for total and permanent disability, such judgment shall be in the sum of thirty thousand dollars. If the agreement be approved by the department, or compensation awarded as claimed in the petition, the amount of compensation stipulated in the agreement or claimed in the petition shall be a lien, as of the date when the agreement or petition was filed with the prothonotary. Pending the approval of the agreement or the award of compensation, no other lien which may be attached to the employer's property during such time shall gain priority over the lien of such agreement or award; but no execution shall issue on any compensation judgment before the approval of the agreement or the award of compensation on the said petition.

If the agreement be disapproved, or, after hearing, compensation shall be disallowed, the employer may file, with the prothonotary of any county in which the petition or agreement is on record as a judgment, a certified copy of the disapproval of the agreement or disallowance of compensation, and it shall be the duty of such prothonotary to strike off the judgment.

If the amount of compensation claimed be disallowed, but another amount awarded, the compensation judgment shall be a lien to the extent of the award, as of the date of filing the petition with the prothonotary, with the same effect as to other liens and the same disability to issue execution thereon as if the compensation claimed had been allowed. In such cases the prothonotary shall make such modification of the record as shall be appropriate.

If the compensation payable under any agreement or award upon which judgment has been entered under the provisions of this section shall be modified, suspended, reinstated, or terminated by a supplemental agreement executed under the provisions of section four hundred and eight, or by an award or order made under the provisions of section four hundred and thirteen, any party to such judgment, at any time after such agreement has been approved by the department or after the expiration of the time allowed for an appeal from the award or order, may file with the prothonotary of the court of common pleas of any county in which the judgment is on record a certified copy of such supplemental agreement, award, or order and it shall thereupon be the duty of the prothonotary to modify, suspend, reinstate, or satisfy such judgment in accordance with the terms of such supplemental agreement, award, or order.

Execution may issue by first filing with the prothonotary an affidavit that there has been a default in payments of compensation due on any judgment for compensation, entered prior to the approval of the compensation agreement, or an award on petition, as soon as such agreement shall have been approved by the department or such award made as evidenced by the approval of the board of the award or by a certified copy thereof.

Execution shall in all cases be for the amount of compensation and interest thereon due and payable up to the date of the issuance of said execution, with costs, and further execution may issue from time to time as further compensation shall become due and payable until full amount of the judgment with costs shall have actually been paid.

Section 429. If any party against whom a compensation agreement, award, or other order fixing the compensation payable under this act has been filed of record in any county of this Commonwealth in accordance with the provisions of section four hundred and twenty-eight of this article, or against whom judgment has been entered by the prothonotary of the court of common pleas of any county on any award or order of the board or a referee, shall, at any time, present to the [board] *department* receipts or copies thereof, certified by any referee, showing the payment of compensation as required by the agreement or award in full to the date of presentation to the referee, the [board] *department* shall issue a certificate to such party, in the form prescribed, stating the extent to which the judgment on the agreement or award has been reduced. Upon the presentation of such certificate to the prothonotary of the court of common pleas of any county in which such agreement or award has been filed of record as a judgment, or in which judgment on an award has been entered by the prothonotary of the court of common pleas, it shall be the prothonotary's duty to mark such judgment satisfied to the extent of the payments so certified, and, upon the presentation to such prothonotary of a certificate issued by the board under the provisions of section three hundred and seventeen of this act, it shall be the duty of the prothonotary to mark such judgment fully satisfied.

Section 430. (a) The lien of any judgment entered upon any award shall not be divested by any appeal. **[If, however, the party appealing from the award shall file with the board a bond, in such amount and in such form as the rules and regulations of the board shall direct, the appeal shall, pending its decision, excuse the payment of so much of the compensation as is contested therein; but if the final decision on appeal shall sustain the award, it shall be the duty of the employer by whom such award is payable to make payments of compensation as from the date of the original award. If on appeal the award is sustained as to a part, it shall be the duty of the employer by whom such part is payable to make payments as from the date of the original award. In case the award is annulled on appeal, it shall be the duty of the prothonotary of any county in which such award has been entered as a judgment to mark it satisfied.]**

*(b) No appeal shall operate as a supersedeas, unless the board or the court to whom the appeal is taken shall, upon petition for same, so order after consideration of the contentions of the parties. The board or court shall rule upon the petition for a supersedeas as soon as possible and shall consider whether failure to pay or continue to pay compensation immediately may jeopardize the health or well being of the employe and/or his dependents and any other facts which the board or court deems to be relevant. The decision upon such petition shall not be appealable. Any insurer or employer who terminates, decreases or refuses to make any payment provided for in the decision without filing a petition and being granted a supersedeas as provided in this section shall be subject to a penalty as provided in section 435, except in the case of payments terminated as provided in section 434.*

Section 432. It shall be the duty of the prothonotary of [each court of common pleas, and of the Supreme and Superior] *the Commonwealth* Court of the Commonwealth, to make a monthly report to the board of the disposition of all appeals taken to such court under the provisions of this article.

Section 433. A document on file in the department or with [the board or] any referee *of the department, or with the board*, or part of the record of any proceedings taken under Articles III and IV of this act, shall be proved by a copy thereof, certified by the department under the seal of the department, or certified by the chairman of the board and attested by the secretary of the board under seal of the board, as the case may be.

Section 434. A final receipt, given by an employe or dependent entitled to compensation under a compensation agreement *notice* or award, shall be prima facie evidence of the termination of the employer's liability to pay compensation under such agreement *notice* or award: Provided, however, That [the board, or] a referee designated by the [board,] *department* may, at any time within two years from the date to which payments have been made, set aside a final receipt, upon petition filed with the [board] *department, or on the department's own motion*, if it be [conclusively proved] *shown* that all disability due to the accident in fact had not terminated.

Section 435. (a) *The department shall establish and promulgate rules and regulations consistent with this act, which are reasonably calculated to:*

- (i) expedite the reporting and processing of injury cases,*
- (ii) insure full payment of compensation when due,*
- (iii) expedite the hearing and determination of claims for compensation and petitions filed with the department under this act,*
- (iv) provide the disabled employe or his dependents with timely notice and information of his or their rights under this act,*
- (v) explain and enforce the provisions of this act.*

(b) *If it appears that there has not been compliance with this act or rules and regulations promulgated thereunder the department may, on its own motion give notice to any persons involved in such apparent noncompliance and schedule a hearing for the purpose of determining whether there has been compliance. The notice of hearing shall contain a statement of the matter to be considered.*

(c) *The board shall establish rules of procedure, consistent with this act, which are reasonably calculated to expedite the hearing and determination of appeals to the board and to insure full payment of compensation when due.*

(d) *The department, the board, or any court which may hear any proceedings brought under this act shall have the power to impose penalties as provided herein for violations of the provisions of this act or such rules and regulations or rules of procedure:*

(i) *Employers and insurers may be penalized a sum not exceeding ten per centum of the amount awarded and interest accrued and payable: Provided, however, That such penalty may be increased to twenty per centum in cases of unreasonable or excessive delays. Such penalty shall be payable to the same persons to whom the compensation is payable.*

(ii) *Any penalty or interest provided for anywhere in this act shall not be considered as compensation for the purposes of any limitation on the total amount of compensation payable which is set forth in this act.*

(iii) *Claimants shall forfeit any interest that would normally be payable to them with respect to any period of unexcused delay which they have caused.*

*Section 436. The secretary, any referee, and any member of the board shall have the power to issue subpoenas to require the attendance of witnesses and/or the production of books, documents, and papers pertinent to any hearing. Any witness who refuses to obey such summons or subpoenas, or who refuses to be sworn or affirmed to testify, or who is guilty of any contempt after notice to appear, may be punished as for contempt of court, and, for this purpose, an application may be made to any court of common pleas within whose territorial jurisdiction the offense was committed, for which purpose such court is hereby given jurisdiction.*

*Section 437. The board, department and any referee shall have the power to conduct any investigation which may be deemed necessary in any matter properly before them. Such investigations may be made by the board or referee personally, or by any officer or employe of the department, or by any inspector of the department, or by any person or persons authorized by law. Every inspector and employe of the department is hereby empowered and directed to conduct any investigation authorized by this act, at the request of the board, department or any referee, with the consent of the secretary.*

*Section 438. An employer shall report all injuries received by employes in the course of or resulting from their employment immediately to the employer's insurer. If the employer is self-insured such injuries shall be reported to the person responsible for management of the employer's compensation program.*

*An employer shall report such injuries to the Department of Labor and Industry by filing directly with the department on the form it prescribes a report of injury within forty-eight hours for every injury resulting in death, and within three days after the date of injury for all other injuries except those resulting in disability continuing less than the day, shift, or turn in which the injury was received. A copy of this report to the department shall be mailed to the employer's insurer forthwith.*

*Reports of injuries filed with the department under this section shall not be evidence against the employer or the employer's insurer in any proceeding either under this act or otherwise. Such reports may be made available by the department to other State or Federal agencies for study or informational purposes.*

*Section 439. Every employer shall keep a record of each injury to any of his employes as reported to him or of which he otherwise has knowledge. Such record shall include a description of the injury, a statement of any time during which the injured person was unable to work because of the injury, and a description of the manner in which the injury occurred. These records shall be available for inspection by the department or by any governmental agency at reasonable times.*

*Section 440. In any contested case where the insurer has contested liability in whole or in part, the employe or his dependent, as the case may be, in whose favor the matter at issue has been finally determined shall be awarded, in addition to the award for compensation, a reasonable sum for costs incurred for attorney's fee, witnesses, necessary medical examination, and the value of unreimbursed lost time to attend the proceedings: Provided, That cost for attorney fees may be excluded when a reasonable basis for the contest has been established: And provided further, That if the insurer has paid or tendered payment of compensation and the controversy relates to the amount of compensation due, costs for attorney's fee shall be based only on the difference between the final award of compensation and the compensation paid or tendered by the insurer.*

*In contested cases involving petitions to terminate, reinstate, increase, reduce or otherwise modify compensation awards, agreements or other payment arrangements or to set aside final receipts, where the contested issue, in whole or part, is resolved in favor of the claimant, the claimant shall be entitled to an award of reasonable costs as hereinabove set forth.*

*Section 441. (a) If any insurer licensed to transact the business of workmen's compensation insurance within this Commonwealth*

*repeatedly or unreasonably fails to pay promptly compensation for which it is liable, the secretary may recommend to the Insurance Commissioner that the license of the company to transact such business be revoked, or suspended setting forth in detail the reasons for his recommendation. The Insurance Commissioner shall thereupon furnish a copy of the secretary's report to the insurer and shall set a date for public hearing, at which both the insurer and the secretary shall be afforded an opportunity to present evidence. If, after the hearing, the commissioner is satisfied that the insurer has failed to live up to his obligations under this act, he shall promptly revoke or suspend its license.*

*(b) If any employer who is subject to this act as an approved self-insurer repeatedly or unreasonably fails to pay promptly compensation for which it is liable, the secretary may revoke or suspend the privilege granted to the employer to carry its own risk and require it to insure its liability. The secretary shall not take such action against any employer until the employer has been notified in writing of the charges made against it and has been given an opportunity to be heard before the secretary in answer to the charges. From the revocation or suspension of such license or privilege under subsections (a) and (b) of this section an appeal shall lie to the Commonwealth Court.*

*(c) Any person, not an insurer or self-insurer, engaged in the business of adjusting or servicing injury cases for the payment of compensation under this act shall register with the Department of Labor and Industry as a condition of conducting such business and shall furnish such reports of its activities as may be required by rules and regulations of the department. If any person engaged in such business repeatedly or unreasonably fails to provide such services promptly with the result that compensation is not paid promptly, the secretary may revoke or suspend the privilege of conducting such business. The secretary shall not take such action against such person until such person has been notified in writing of the charges made against it by the secretary and has been given an opportunity to be heard before the secretary in answer to the charges. From the revocation of such privilege, an appeal shall lie to the Commonwealth Court. Proceedings for revocation of the privilege of conducting such service or adjustment business shall not relieve any insurer or self-insurer who has engaged in the services of such person from its responsibility under this act or from its liability to revocation under this section.*

*Section 442. All counsel fees of claimants' attorneys for services performed in matters before any referee or the board, whether or not allowed as part of a judgment, shall first be approved by the referee or board as the case may be, before payment. The official conducting any hearing may allow a reasonable attorney fee in any case not exceeding twenty per centum of the amount awarded. Provided, that upon cause*

*shown the cost of twenty per centum may be exceeded at the discretion of the hearing official.*

*In cases where the efforts of claimants' counsel produce a result favorable to the claimant but where no immediate award of compensation is made such as in cases of termination or suspension the hearing official may allow or award reasonable counsel fees without regard to any per centum.*

*Section 443. If, in any case in which a supersedeas has been denied under the provisions of section 413 or section 430, payments of compensation are made as a result thereof and upon the final outcome of the proceedings, it is determined that such compensation was not in fact payable, the insurer who has made such payments shall be reimbursed therefor. A fund shall be credited for this purpose, to be maintained as follows: The department shall assess and collect from each insurer the proportion of the amount of such payments made during the preceding year that the total compensation paid by such insurer during such year bore to the total compensation paid by all insurers during that year: Provided, however, That in the first year in which assessments are made under this provision, the total amount assessed and collected shall be two hundred per cent of the amount paid in such cases during the preceding year.*

APPROVED—The 8th day of February, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 12.

A handwritten signature in cursive script, reading "C. McLaughlin Tucker".

*Secretary of the Commonwealth.*