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H. B. 4607

(By Delegate Diserio)
[Introduced February 17, 2014; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §23-4-6a of the Code of West Virginia, 1931, as amended, relating to workers' compensation benefits and mode of payment to employees and dependents for occupational pneumoconiosis; and providing for further adjustment of claims for occupational pneumoconiosis for a finding of no measurable pulmonary impairment.

Be it enacted by the Legislature of West Virginia:

That §23-4-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

If an employee is found to be permanently disabled due to

1 occupational pneumoconiosis, as defined in section one of this
2 article, the percentage of permanent disability is determined by
3 the degree of medical impairment that is found by the occupational
4 pneumoconiosis board. The commission, successor to the commission,
5 other private carrier or self-insured employer, whichever is
6 applicable, shall enter an order setting forth the findings of the
7 occupational pneumoconiosis board with regard to whether the
8 claimant has occupational pneumoconiosis and the degree of medical
9 impairment, if any, resulting therefrom. That order is the final
10 decision of the commission for purposes of section one, article
11 five of this chapter. If a decision is objected to, the office of
12 judges shall affirm the decision of the Occupational Pneumoconiosis
13 Board made following hearing unless the decision is clearly wrong
14 in view of the reliable, probative and substantial evidence on the
15 whole record. Compensation is paid therefor in the same manner and
16 at the same rate as is provided for permanent disability under the
17 provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m)
18 and (n), section six of this article: *Provided, That for any*
19 ~~employee who applies for occupational pneumoconiosis benefits whose~~
20 ~~award was granted on or after the effective date of the amendment~~
21 ~~and reenactment of this section during the year two thousand three,~~
22 ~~there shall be no permanent partial disability awarded based solely~~
23 ~~upon a diagnosis of occupational pneumoconiosis, it being the~~
24 ~~intent of the Legislature to eliminate any permanent partial~~

1 ~~disability awards for occupational pneumoconiosis without a~~
2 ~~specific finding of measurable impairment~~ if it is determined by
3 the division in accordance with the facts of the case and with the
4 advice and recommendation of the Occupational Pneumoconiosis Board
5 that an employee has occupational pneumoconiosis, but without
6 measurable pulmonary impairment therefrom, the employees shall be
7 awarded and paid twenty weeks of benefits at the same benefits rate
8 as provided herein.

9 If the employee dies from occupational pneumoconiosis, the
10 benefits shall be as provided ~~for~~ in section ten of this article;
11 as to the benefits, sections eleven to fourteen, inclusive, of this
12 article apply.

13 In cases of permanent disability or death due to occupational
14 pneumoconiosis, as defined in section one of this article,
15 accompanied by active tuberculosis of the lungs, compensation shall
16 be payable as for disability or death due to occupational
17 pneumoconiosis alone.

18 The provisions of section sixteen of this article and sections
19 two, three, four and five, article five of this chapter providing
20 for the further adjustment of claims are applicable to the claim of
21 any claimant who receives a permanent partial disability award for
22 occupational pneumoconiosis.

NOTE: The purpose of this bill is to provide an employee,

without measurable pulmonary impairment, twenty weeks of benefits at the same benefits rate as otherwise provided in this section which is a five percent benefit.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.