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WORKERS' COMPENSATION

Workers' Compensation: Amended Provisions

CODE SECTIONS:	O.C.G.A. §§ 34-9-13 (amended); 34-9-100 (new); 34-9-200 (amended); 34-9-200.1 (new); 34-9-205 (amended); 34-9-206 (new); 34-9-221 (amended); 34-9-261 (amended); 34-9-262 (amended); 34-9-263 (amended) and 34-9-265 (amended)
BILL NUMBER:	SB 160
ACT NUMBER:	558
EFFECTIVE DATES:	July 1, 1985 (July 1, 1986 — second step increase in maximum weekly benefits).
SUMMARY:	The Act substantially changes provisions of the Workers' Compensation Act.

History

The Georgia General Assembly has frequently considered bills to amend the Workers' Compensation statute since its original enactment in 1920.¹ Relatively minor amendments have been made in recent years to provide escalation of weekly benefits to reflect inflation.²

SB 160 was initiated by an unusual Committee composed of representatives of labor and business, as well as the insurance industry, state legislators, the public and the bar.³ The Committee proposed legislative amendments to increase compensation to injured workers and their families coupled with measures designed to offset the employers' increased costs from higher benefits.

The Workers' Compensation Study Committee met for fourteen months to study problems associated with the present statute and its administration. Employer representatives were generally willing to support benefit increases, but only if cost-saving measures were included.⁴

The Study Committee originally proposed twelve changes in the Workers' Compensation statute. A constitutional amendment was also pro-

1. 1920 Ga. Laws 167.

2. 1978 Ga. Laws 2220 § 3, 1981 Ga. Laws 842 § 2.1 and 1982 Ga. Laws 2485 §§ 1 and 7.

3. Exec. Order, May 2, 1984. (Governor Harris appointed the Governor's Study Committee on Workers' Compensation in May, 1984. The Committee's term expired on July 1, 1985.)

4. Interview with Don Cargill, Senior Vice President, Business Council of Georgia in Atlanta (May 7, 1985).

posed which would establish a separate fund for revenues generated by assessment of insurance carriers and employers/self-insurers. These revenues, collected for the purpose of operating the State Board of Workers' Compensation (hereinafter the Board), now go into the State's general fund. The excess not used by the Board each year is returned to the State's treasury.⁵

Before the Study Committee's final report⁶ was issued, its members met with the Governor. As a result of this meeting, two proposals were dropped — the proposed constitutional amendment and a new statutory provision authorizing the Board to establish an occupational health and safety counseling service for employers. The new provision would have mandated a two and one-half percent reduction in insurance premiums for every employer who requested and received this safety counseling service and an additional reduction of two and one-half percent when safety recommendations were implemented.

SB 160

O.C.G.A. § 34-9-13(a) adds the word "dependent" preceding "stepchildren" so that a stepchild must be dependent for support on the deceased employee to be entitled to death benefits.

O.C.G.A. § 34-9-13(b)(1) eliminates the previous gender-based discrimination in which a surviving wife was conclusively presumed to be wholly dependent upon her deceased husband, while the husband was required to prove his dependency upon a deceased wife. The Georgia Supreme Court held that this gender-based discrimination was an unconstitutional violation of the equal protection clause of the Fourteenth Amendment of the U.S. Constitution.⁷ Under the new law, a wife or husband is presumed wholly dependent upon the deceased employee. O.C.G.A. § 34-9-13(b)(1) establishes a rebuttable presumption of dependency. The presumption arises if the surviving spouse were employed for ninety days prior to the accident resulting in the death of the employee.

O.C.G.A. § 34-9-13(b)(2) expands the definition of dependent children to include those over the age of eighteen when enrolled full-time in high school or under the age of twenty-two and a full-time student in a post secondary institution of higher learning. Extending the statutory dependency beyond age eighteen enables dependent children to continue their education.

O.C.G.A. § 34-9-13(e) terminates the dependency of a spouse upon remarriage or cohabitation in a meretricious relationship. A meretricious

5. Ga. Const. of 1983, art. III, § 9 para. 4(c).

6. The Study Committee's final report consisted only of the draft of the proposed statutory amendments.

7. *Insurance Co. of N. Am. v. Russell*, 246 Ga. 269, 271 S.E.2d 178 (1980). See also *Wenglar v. Druggist Mut. Ins. Co.*, 446 U.S. 142 (1980).

relationship is defined as a "relationship in which persons of the opposite sex live together continuously and openly in a relationship similar or akin to marriage, which relationship includes either sexual intercourse or the sharing of living expenses." O.C.G.A. § 34-9-13(e) also provides that the dependency of a spouse shall terminate at age sixty-five or after payment of 400 weeks of benefits, whichever is greater. Under prior law, benefits terminated after 400 weeks.⁸ O.C.G.A. § 34-9-265(d) increases total compensation payable to a surviving spouse as a sole dependent from \$32,500 to \$65,000. O.C.G.A. § 34-9-265(b)(1) also increases the maximum payment for the reasonable expenses of the employee's last illness and burial to \$5,000.

The maximum weekly benefit for total disability is increased under O.C.G.A. § 34-9-261(a) from \$135 to \$155 per week. In an injury or death resulting from an accident occurring on or after July 1, 1986, the maximum weekly benefit under O.C.G.A. § 34-9-261(b) will be \$175. This is a conservative increase compared to the original bill, which called for an increase to \$215 per week by 1988,⁹ and compared to the Senate Committee Substitute version which called for an increase to \$200 per week by 1987.¹⁰

The maximum weekly compensation for temporary partial disability under O.C.G.A. § 34-9-262(a) increases from eighty dollars to \$104. After July 1, 1986, an employee is compensated for partial disability resulting from an accident at the rate of \$117 per week.¹¹

O.C.G.A. § 34-9-263, which relates to compensation for permanent partial disability, changes the duration of payments. The periods during which payments are made for the loss of specific body members are changed as follows:

- (1) traumatic loss of hearing, one ear, increased from sixty weeks to seventy-five weeks;
- (2) loss of vision in one eye, increased from 125 weeks to 150 weeks;
- (3) disability to the body as a whole, decreased from 350 weeks to 300 weeks.

The combination of payments permitted under O.C.G.A. § 34-9-262 for temporary partial disability and under O.C.G.A. § 34-9-263 for permanent partial disability is decreased from 350 to 300 weeks under O.C.G.A. § 34-9-263(f).

O.C.G.A. § 34-9-200, which relates to compensation for medical care and vocational rehabilitation, is significantly changed. Vocational rehabilitation provisions are deleted from O.C.G.A. § 34-9-200 and separated in O.C.G.A. § 34-9-200.1.

A new category of medical benefits was added to O.C.G.A. § 34-9-

8. O.C.G.A. § 34-9-265(b)(2) (1982).

9. SB 160, 1985 Ga. Gen. Assem. § 5.

10. SB 160 (SCS), 1985 Ga. Gen. Assem. § 5.

11. O.C.G.A. § 34-9-262(b) (Supp. 1985).

200(a): "items, and services which are prescribed by a licensed physician" This is apparently in response to the Georgia Court of Appeals decision holding that household help was not compensable as a medical expense.¹² Although under prior law, the Board could approve additional expenses, a \$5,000 limit was specified.¹³ This limit has now been deleted.

The Board's authority under O.C.G.A. § 34-9-205 to review physician and hospital fees has been increased to include the power to review fees for "other services."¹⁴ O.C.G.A. § 34-9-205(b) grants the Board authority to review the "necessity" of services rendered. The Board may require recommendations from a peer review panel on fees and necessity of treatment.

O.C.G.A. § 34-9-205(b) also provides that the Board will publish annually, by geographical location, a list of "usual, customary, and reasonable charges for all medical services." This list of reasonable charges is not the same as a mandatory fee schedule used in some state workers' compensation systems, but it should have the effect of discouraging unusually high fees for common medical procedures.

O.C.G.A. § 34-9-200.1 amends the law relating to vocational rehabilitation. The period of required rehabilitation is reduced under O.C.G.A. § 34-9-200.1 from fifty-two weeks to twenty-six weeks, unless the Board finds that an extension is necessary. The Board must make an assessment in accordance with O.C.G.A. § 34-9-200.1(b) of the rehabilitation needs of an injured employee within forty-five days after it receives notification of an injury. After the Board notifies the employer, insurer and employee that rehabilitation is required, the employer or insurer has fifteen days to appoint a rehabilitation supplier or to give reason why rehabilitation is not necessary. The time limitation on the Board's assessment of the need for vocational rehabilitation stems from the rehabilitation experts' belief that an injured employee will be able to return to work sooner if he is quickly involved in rehabilitation.¹⁵

O.C.G.A. § 34-9-200.1(e) authorizes the Board to review the necessity of rehabilitation services as well as fees. Under O.C.G.A. § 34-9-200.1(f), the Board may reduce or suspend the fee of an employee's attorney who fails to cooperate with the rehabilitation supplier. To be registered as a rehabilitation supplier with the Board, a supplier must be certified by one of four rehabilitation certifications specified in O.C.G.A. § 34-9-200.1(g).

O.C.G.A. § 34-9-100, relating to filing of claims for compensation, is amended by adding subsection (d). This provides that any application for a hearing filed with the Board for which no hearing is conducted within five years shall be automatically dismissed.

12. *Insurance Co. of N. Am. v. Money*, 152 Ga. App. 72, 262 S.E.2d 240 (1979).

13. O.C.G.A. § 34-9-200(a) (1982).

14. O.C.G.A. § 34-9-305(a) (Supp. 1985).

15. Address by Andrew J. Hamilton, Esq., ICLE and State Bar of Georgia Meeting (April 12, 1985).

O.C.G.A. § 34-9-206 provides that a health care provider, such as a group insurance company, which covers the costs of medical treatment for a person who subsequently files a workers' compensation claim, may give notice to the Board that the provider is a party at interest. It authorizes the Board to order the employer or workers' compensation carrier to reimburse the health care plan funds paid for a claim that was later determined to be compensable under workers' compensation. The intent of this provision is to avoid the result in *Watkins Memorial Hospital v. Chadwick*.¹⁶ In *Watkins*, the Court of Appeals held that the Board had no jurisdiction over group insurance carriers to require reimbursement of medical expenses paid by the carriers which were also covered under the Workers' Compensation Act.

O.C.G.A. § 34-9-221(e) penalizes an employer if payment is not made on an uncontroverted claim within fourteen days of notice of injury. Prior law gave an additional fourteen days after payment became due before assessment of a penalty.

16. 171 Ga. App. 446, 319 S.E.2d 876 (1984).