

CHAPTER 176

WORKERS' COMPENSATION

176.001	Intent of the legislature.	176.262	Appointment of compensation judges; limitation.
176.011	Definitions.	176.291	Disputes and defaults; procedure.
176.021	Application to employers and employees.	176.301	Determination of issues.
176.041	Excluded employments; application, exceptions.	176.305	Petitions filed with the workers' compensation division.
176.061	Third party liability.	176.306	Scheduled hearings.
176.081	Legal services or disbursements; lien; review.	176.311	Reassignment of petition for hearing.
176.101	Compensation schedule.	176.321	Answer to petition.
176.102	Rehabilitation.	176.331	Award by default.
176.105	Commissioner to establish disability schedules.	176.341	Hearing on petition.
176.111	Dependents, allowances.	176.351	Testimonial powers.
176.131	Subsequent disability, special fund.	176.371	Award or disallowance of compensation.
176.132	Supplementary benefits.	176.381	Reference of questions of fact.
176.133	Attorney's fees, supplementary benefits.	176.391	Investigations.
176.136	Medical fee review.	176.401	Hearings public.
176.1361	Testimony of providers.	176.411	Rules of evidence, pleading, and procedure.
176.152	Permanent partial disability panel.	176.421	Appeals to workers' compensation court of appeals.
176.161	Alien dependents.	176.431	Appeal based on error of law by compensation judge.
176.181	Insurance.	176.441	Appeal based on fraud or insufficiency of evidence.
176.182	Business licenses or permits; coverage required.	176.461	Setting aside award.
176.183	Uninsured and self-insured employers; benefits to employees and dependents; liability of employer.	176.471	Review by supreme court on certiorari.
176.191	Dispute between two or more employers or insurers regarding liability.	176.491	Stay of proceedings pending disposition of case.
176.221	Payment of compensation and treatment charges, commencement.	176.511	Costs.
176.225	Additional award as penalty.	176.521	Settlement of claims.
176.231	Report of death or injury to commissioner of the department of labor and industry.	176.531	Award of compensation against a political subdivision or school district.
176.241	Notice to division of intention to discontinue compensation payments.	176.645	Adjustment of benefits.

176.001 INTENT OF THE LEGISLATURE.

It is the intent of the legislature that chapter 176 be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of chapter 176.

History: 1981 c 346 s 52

176.011 DEFINITIONS.

[For text of subs 1 to 5, see M.S.1980]

Subd. 6. (1) "Court of appeals" means the workers' compensation court of appeals of Minnesota.

(2) "Division" means the workers' compensation division of the department of labor and industry.

(3) "Department" means the department of labor and industry.

(4) "Commissioner", unless the context clearly indicates otherwise, means the commissioner of labor and industry.

[For text of subs 7 to 8, see M.S.1980]

Subd. 9. **Employee.** "Employee" means any person who performs services for another for hire; and includes the following:

- (1) an alien;
- (2) a minor;

MINNESOTA STATUTES 1981 SUPPLEMENT

(3) a sheriff, deputy sheriff, constable, marshal, policeman, firefighter, a county highway engineer, and a peace officer while engaged in the enforcement of peace or in and about the pursuit or capture of any person charged with or suspected of crime and any person requested or commanded to aid an officer in arresting any person, or in retaking any person who has escaped from lawful custody, or in executing any legal process in which case, for purposes of calculating compensation payable under this chapter, the daily wage of the person requested or commanded to assist an officer or to execute a legal process shall be the prevailing wage for similar services where the services are performed by paid employees;

(4) a county assessor;

(5) an elected or appointed official of the state, or of any county, city, town, school district or governmental subdivision therein but an officer of a political subdivision elected or appointed for a regular term of office or to complete the unexpired portion of any such regular term, shall be included only after the governing body of the political subdivision has adopted an ordinance or resolution to that effect;

(6) an executive officer of a corporation except an officer of a family farm corporation as defined in section 500.24, subdivision 1, clause (c), nor shall it include an executive officer of a closely held corporation who is referred to in section 176.012;

(7) a voluntary uncompensated worker, other than an inmate, rendering services in state institutions under the commissioner of public welfare and state institutions under the commissioner of corrections similar to those of officers and employees of these institutions, and whose services have been accepted or contracted for by the commissioner of public welfare or the commissioner of corrections as authorized by law, shall be employees within the meaning of this subdivision. In the event of injury or death of the voluntary uncompensated worker, the daily wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;

(8) a voluntary uncompensated worker engaged in peace time in the civil defense program when ordered to training or other duty by the state or any political subdivision thereof, shall be an employee. The daily wage of the worker for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services where the services are performed by paid employees;

(9) a voluntary uncompensated worker participating in a program established by a county welfare board shall be an employee within the meaning of this subdivision. In the event of injury or death of the voluntary uncompensated worker, the wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid in the county at the time of the injury or death for similar services where the services are performed by paid employees working a normal day and week;

(10) a voluntary uncompensated worker accepted by the commissioner of natural resources who is rendering services as a volunteer pursuant to section 84.089 shall be an employee. The daily wage of the worker for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of injury or death for similar services where the services are performed by paid employees;

(11) a member of the military forces, as defined in section 190.05, while in "active service" or "on duty" as defined in section 190.05, when the service or duty is ordered by state authority. The daily wage of the member for the purpose of calculating compensation payable under this chapter shall be based on the member's usual earnings in civil life. If there is no evidence of previous occupation or earning, the trier of fact shall consider the member's earnings as a member of the military forces;

(12) a voluntary uncompensated worker, accepted by the director of the Minnesota historical society, rendering services as a volunteer, pursuant to chapter 138, shall be an employee. The daily wage of the worker, for the purposes of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of injury or death for similar services where the services are performed by paid employees;

(13) a voluntary uncompensated worker, other than a student, who renders services at the Minnesota school for the deaf or the Minnesota braille and sight-saving school, and whose services have been accepted or contracted for by the state board of education, as authorized by law, shall be an employee within the meaning of this subdivision. In the event of injury or death of the voluntary uncompensated worker, the daily wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;

(14) a voluntary uncompensated worker, other than a resident of the veterans home, who renders services at a Minnesota veterans home, and whose services have been accepted or contracted for by the commissioner of veterans affairs, as authorized by law, is an employee within the meaning of this subdivision. In the event of injury or death of the voluntary uncompensated worker, the daily wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;

(15) a worker who renders in-home attendant care services to a physically handicapped person, and who is paid directly by the commissioner of public welfare for these services, shall be an employee of the state within the meaning of this subdivision, but for no other purpose.

In the event it is difficult to determine the daily wage as provided in this subdivision, then the trier of fact may determine the wage upon which the compensation is payable.

[For text of subds 9a to 22, see M.S.1980]

History: 1981 c 346 s 53,54,139

176.021 APPLICATION TO EMPLOYERS AND EMPLOYEES.

Subdivision 1. **Liability for compensation.** Except as excluded by this chapter all employers and employees are subject to the provisions of this chapter.

Every employer is liable for compensation according to the provisions of this chapter and is liable to pay compensation in every case of personal injury or death of his employee arising out of and in the course of employment without regard to the question of negligence. The burden of proof of these facts is upon the employee.

If the injury was intentionally self-inflicted or the intoxication of the employee is the proximate cause of the injury, then the employer is not liable for compensation. The burden of proof of these facts is upon the employer.

MINNESOTA STATUTES 1981 SUPPLEMENT

Subd. 1a. **Burden of proof.** All disputed issues of fact arising under chapter 176 shall be determined by a preponderance of the evidence. Preponderance of the evidence means evidence produced in substantiation of a fact which, when weighed against the evidence opposing the fact, has more convincing force and greater probability of truth.

Questions of law arising under chapter 176 shall be determined in accordance with the rules of construction generally applied to all other civil matters.

[For text of subd 2, see M.S.1980]

Subd. 3. **Compensation, commencement of payment.** All employers shall commence payment of compensation at the time and in the manner prescribed by this chapter without the necessity of any agreement or any order of the division. Except for medical, burial, and other non-periodic benefits, payments shall be made as nearly as possible at the intervals when the wage was payable, provided, however, that payments for permanent partial disability shall be governed by subdivision 3a. If doubt exists as to the eventual permanent partial disability, payment, pursuant to subdivision 3a, shall be then made when due for the minimum permanent partial disability ascertainable, and further payment shall be made upon any later ascertainment of greater permanent partial disability. At the time of any tender of the lump sum payment, the employee and employer shall be furnished with a copy of the medical report upon which the payment is based, together with a statement by the insurer as to whether the tendered payment is for minimum permanent partial disability or final and eventual disability. Compensation for permanent partial disability is payable in addition to compensation for temporary total disability and temporary partial disability pursuant to section 176.101, subdivisions 1 and 2, as provided in subdivision 3a. Compensation for permanent partial disability is payable concurrently and in addition to compensation for permanent total disability pursuant to section 176.101, subdivision 5, as provided in subdivision 3a. Compensation for permanent partial disability shall be withheld pending completion of payment for temporary total and temporary partial disability but shall not be withheld pending payment of compensation for permanent total disability, and no credit shall be taken for payment of permanent partial disability against liability for temporary total or permanent total disability. Liability on the part of an employer or his insurer for disability of a temporary total, temporary partial, and permanent total nature shall be considered as a continuing product and part of the employee's inability to earn or reduction in earning capacity due to injury or occupational disease and shall be payable accordingly, subject to subdivision 3a. Permanent partial disability is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation, subject to subdivision 3a. The right to receive temporary total, temporary partial, permanent partial or permanent total disability payments shall vest in the injured employee or his dependents under this chapter or, if none, in his legal heirs at the time the disability can be ascertained and the right shall not be abrogated by the employee's death prior to the making of the payment.

Subd. 3a. **Permanent partial benefits, payment.** Payments for permanent partial disability as provided in section 176.101, subdivision 3, shall be made in the following manner:

- (a) If the employee returns to work, payment shall be made by lump sum;
- (b) If temporary total payments have ceased, but the employee has not returned to work, payment shall be made at the same intervals as temporary total payments were made;

(c) If temporary total disability payments cease because the employee is receiving payments for permanent total disability or because the employee is retiring or has retired from the work force, then payment shall be made by lump sum;

(d) If the employee completes a rehabilitation plan pursuant to section 176.102, but the employer does not furnish the employee with work he can do in his permanently partially disabled condition, and the employee is unable to procure such work with another employer, then payment shall be made by lump sum.

[For text of subs 4 to 7, see M.S.1980]

Subd. 8. **Amounts adjusted.** Amounts of compensation payable by an employer or his insurer under this chapter may be rounded to the nearest dollar amount. An employer or insurer who elects to make such adjustments shall do so for all compensation payments under this chapter.

History: 1981 c 346 s 55-59

176.041 EXCLUDED EMPLOYMENTS; APPLICATION, EXCEPTIONS.

[For text of subs 1 to 4, see M.S.1980]

Subd. 6. **Commissioner of labor and industry; additional powers.** Whenever an employee is covered by subdivision 2, 3 or 4, the commissioner may enter into agreements with the appropriate agencies of other states for the purpose of resolving conflicts of jurisdiction or disputes concerning workers' compensation coverage. An agreement entered into pursuant to this subdivision may be appealed in the same manner and within the same time as if the appeal were from an order or decision of a compensation judge to the workers' compensation court of appeals or the district court.

History: 1981 c 346 s 60

176.061 THIRD PARTY LIABILITY.

Subdivision 1. **Election of remedies.** Where an injury or death for which benefits are payable occurs under circumstances which create a legal liability for damages on the part of a party other than the employer and at the time of such injury or death that party was insured or self-insured in accordance with this chapter, the employee, in case of injury, or his dependents, in case of death, may proceed either at law against that party to recover damages or against the employer for benefits, but not against both.

[For text of subd 2, see M.S.1980]

Subd. 3. **Election to receive benefits from employer; subrogation.** If the employee or his dependents elect to receive benefits from the employer, or the special compensation fund, the employer, or the special compensation fund, is subrogated to the right of the employee or his dependents to recover damages against the other party. The employer, or the attorney general on behalf of the special compensation fund, may bring legal proceedings against such party and recover the aggregate amount of benefits payable to or on behalf of the employee or his dependents, together with costs, disbursements, and reasonable attorney's fees of the action.

If an action as provided in this chapter prosecuted by the employee, the employer, or the attorney general on behalf of the special compensation fund,

against the third person, results in judgment against the third person, or settlement by the third person, the employer shall have no liability to reimburse or hold the third person harmless on the judgment or settlement in absence of a written agreement to do so executed prior to the injury.

Subd. 4. **Application of subdivisions 1, 2, and 3.** The provisions of subdivisions 1, 2, and 3 apply only where the employer liable for benefits and the other party legally liable for damages are insured or self-insured and engaged, in the due course of business in, (a) furtherance of a common enterprise, or (b) in the accomplishment of the same or related purposes in operations on the premises where the injury was received at the time thereof.

Subd. 5. **Cumulative remedies.** Where an injury or death for which benefits are payable is caused under circumstances which created a legal liability for damages on the part of a party other than the employer, that party being then insured or self-insured in accordance with this chapter, and the provisions of subdivisions 1, 2, 3, and 4 do not apply, or the party other than the employer is not then insured or self-insured as provided by this chapter, legal proceedings may be taken by the employee or his dependents in accordance with clause (a), or by his employer, or by the attorney general on behalf of the special compensation fund, in accordance with clause (b), against the other party to recover damages, notwithstanding the payment by the employer, or the special compensation fund or their liability to pay benefits.

(a) If an action against the other party is brought by the injured employee or his dependents and a judgment is obtained and paid or settlement is made with the other party, the employer or the special compensation fund may deduct from the benefits payable the amount actually received by the employee or dependents or paid on their behalf in accordance with subdivision 6. If the action is not diligently prosecuted or if the court deems it advisable in order to protect the interests of the employer, or the special compensation fund, upon application the court may grant the employer, or the special compensation fund, the right to intervene in any such action for the prosecution thereof. If the injured employee or his dependents or any party on their behalf receives benefits from the employer, or the special compensation fund, or institute proceedings to recover the same or accept from the employer, or the special compensation fund, any payment on account of the benefits, the employer, or the special compensation fund, is subrogated to the rights of the employee or his dependents. This employer, or the attorney general on behalf of the special compensation fund, may maintain an action or continue an action already instituted. This action may be maintained in the name of the employee or the names of the dependents, or in the name of the employer or in the name of the attorney general on behalf of the special compensation fund against such other party for the recovery of damages. If the action is not diligently prosecuted by the employer, or the attorney general on behalf of the special compensation fund, or the court deems it advisable in order to protect the interest of the employee, the court, upon application, may grant to the employee or his dependents the right to intervene in the action for the prosecution thereof. The proceeds of such action or settlement thereof shall be paid in accordance with subdivision 6.

(b) If an employer, being then insured, sustains damages due to a change in workers' compensation insurance premiums, whether by a failure to achieve a decrease or by a retroactive or prospective increase, as a result of the injury or death of his employee which was caused under circumstances which created a legal liability for damages on the part of a party other than the employer, the employer, notwithstanding other remedies provided, may maintain an action against the

other party for recovery of such premiums. This cause of action may be brought either by joining in an action described in clause (a) or by a separate action. Damages recovered under this clause shall be for the benefit of the employer and the provisions of subdivision 6 shall not be applicable to such damages.

(c) The third party is not liable to any person other than the employee or his dependents, or his employer, or the special compensation fund, for any damages resulting from the injury or death.

A co-employee working for the same employer is not liable for a personal injury incurred by another employee unless the injury resulted from the gross negligence of the co-employee or was intentionally inflicted by the co-employee.

Subd. 6. Costs, attorney fees, expenses. The proceeds of all actions for damages or settlement thereof under this section, except for damages received under subdivision 5, clause (b) received by the injured employee or his dependents or by the employer, or the special compensation fund, as provided by subdivision 5, shall be divided as follows:

(a) After deducting the reasonable cost of collection, including but not limited to attorneys fees and burial expense in excess of the statutory liability, then

(b) One-third of the remainder shall in any event be paid to the injured employee or his dependents, without being subject to any right of subrogation.

(c) Out of the balance remaining, the employer, or the special compensation fund, shall be reimbursed in an amount equal to all benefits paid under this chapter to or on behalf of the employee or his dependents by the employer, or special compensation fund, less the product of the costs deducted under clause (a) divided by the total proceeds received by the employee or his dependents from the other party multiplied by all benefits paid by the employer, or the special compensation fund, to the employee or his dependents.

(d) Any balance remaining shall be paid to the employee or his dependents, and shall be a credit to employer, and the special compensation fund, for any benefits which employer is obligated to pay, but has not paid, and for any benefits that such employer shall be obligated to make in the future.

There shall be no reimbursement or credit to the employer, or the special compensation fund, for interest or penalties.

Subd. 7. Medical treatment. The liability of an employer, or the special compensation fund, for medical treatment under this chapter shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, against whom the employee may have a cause of action which may be sued under this chapter, but the employer, or the attorney general on behalf of the special compensation fund, shall have a separate additional cause of action against such third party to recover any amounts paid for medical treatment under this section resulting from the negligence of such third party. This separate cause of action of the employer, or the attorney general on behalf of the special compensation fund, may be asserted in a separate action brought by the employer, or the attorney general on behalf of the special compensation fund, against such third party or in the action commenced by the employee or the employer, or the attorney general on behalf of the special compensation fund, under this chapter, but in the latter case the cause of action shall be separately stated, the amount awarded thereon shall be separately set out in the verdict, and the amount recovered by suit or otherwise as reimbursement for medical expenses shall be for the benefit of the employer, or the special compensation fund, to the extent that the employer, or the special compensation fund, has paid or will be required to

pay for medical treatment of the injured employee and shall not affect the amount of periodic compensation to be paid.

[For text of subds 8 and 9, see M.S.1980]

History: 1981 c 346 s 61-66

176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN; REVIEW.

Subdivision 1. No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought under the provisions of this chapter is an enforceable lien against the compensation or is valid or binding in any other respect unless approved in writing by the division, a compensation judge, a judge of the district court, or the workers' compensation court of appeals, if the claim arises out of a proceeding for compensation under this chapter, or by the judge presiding at the trial in an action for damages, or by a judge of the district court in a settlement of a claim for damages without trial. The division, a compensation judge, a judge of the district court or the workers' compensation court of appeals shall in matters before them, including settlement proceedings, have authority to approve a fee of up to 25 percent of the first \$4,000 of compensation awarded to the employee and up to 20 percent of the next \$27,500 of compensation awarded to employee. If the employer or his insurer or the defendant is given written notice of such claims for legal services or disbursements, the same shall be a lien against the amount paid or payable as compensation, subject to determination of the amount and approval provided by this chapter. Provided, however, that in no case shall fees be calculated on the basis of any undisputed portion of compensation awards. Allowable fees under this chapter shall be based solely upon genuinely disputed portions of claims.

Subd. 2. Any application for attorney fees in excess of the amount authorized in subdivision 1 shall be made to the workers' compensation court of appeals. The application shall set forth the fee requested and the basis for such request and whether or not a hearing is requested. The application, with affidavit of service upon the employee, shall be filed by the attorney requesting the fee. If a hearing is requested by an interested party, a hearing shall be set with notice of such hearing served upon known interested parties. In all cases the employee shall be served with notice of hearing.

Subd. 3. An employee who is dissatisfied with his attorney fees, may file an application for review by the workers' compensation court of appeals. Such application shall state the basis for the need of review and whether or not a hearing is requested. A copy of such application shall be served upon the attorney for the employee by the court administrator and if a hearing is requested by either party, the matter shall be set for hearing. The notice of hearing shall be served upon known interested parties. The attorney for the employee shall be served with a notice of the hearing. The workers' compensation court of appeals shall have the authority to raise the question of the issue of the attorney fees at any time upon its own motion and shall have continuing jurisdiction over attorney fees.

Subd. 4. The review of a determination by the commissioner or the workers' compensation court of appeals shall be only by supreme court by certiorari upon the ground that it is arbitrary and unwarranted by the evidence. There shall be no review under sections 176.421 and 176.442.

[For text of subd 5, see M.S.1980]

Subd. 6. The workers' compensation court of appeals may adopt reasonable and proper rules to effect its obligations under this section.

[For text of subd 7, see M.S.1980]

Subd. 7a. At any time prior to one day before a matter is to be heard, a party litigating a claim made pursuant to this chapter may serve upon the adverse party a reasonable offer of settlement of the claim, with provision for costs and disbursements then accrued. If before the hearing the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with the proof of service thereof, and thereupon judgment shall be entered.

If an offer by an employer or insurer is not accepted by the employee, it shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine attorney's fees. Notwithstanding the provisions of subdivision 7, if the judgment finally obtained by the employee is less favorable than the offer, the employer shall not be liable for any part of the attorney's fees awarded pursuant to this section.

If an offer by an employer is not accepted by the employer or insurer, it shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine attorney's fees. Notwithstanding the provisions of subdivision 7, if the judgment finally obtained by the employee is at least as favorable as the offer, the employer shall pay an additional 25 percent, over the amount provided in subdivision 7, of that portion of the attorney's fee which has been awarded pursuant to this section that is in excess of \$250.

The fact that an offer is made but not accepted does not preclude a subsequent offer.

[For text of subd 8, see M.S.1980]

Subd. 9. An attorney who is hired by an employee to provide legal services with respect to a claim for compensation made pursuant to this chapter shall prepare a retainer agreement in which the provisions of this section are specifically set out and provide a copy of this agreement to the employee. The retainer agreement shall provide a space for the signature of the employee. A signed agreement shall raise a conclusive presumption that the employee has read and understands the statutory fee provisions. No fee shall be awarded pursuant to this section in the absence of a signed retainer agreement.

Subd. 10. An attorney who knowingly violates any of the provisions of this chapter with respect to authorized fees for legal services in connection with any demand made or suit or proceeding brought under the provisions of this chapter is guilty of a gross misdemeanor.

History: 1981 c 346 s 67-74

176.101 COMPENSATION SCHEDULE.

[For text of subs 1 and 2, see M.S.1980]

Subd. 3. **Permanent partial disability.** For permanent partial disability compensation shall be that named in the following schedule, subject to a maximum compensation equal to the statewide weekly wage:

(1) For the loss of a thumb, 66 2/3 percent of the daily wage at the time of injury during 65 weeks;

(2) For the loss of a first finger, commonly called index finger, 66 2/3 percent of the daily wage at the time of injury during 40 weeks;

(3) For the loss of a second finger, 66 2/3 percent of the daily wage at the time of injury during 35 weeks;

MINNESOTA STATUTES 1981 SUPPLEMENT

176.101 WORKERS' COMPENSATION

696

(4) For the loss of a third finger, 66 2/3 percent of the daily wage at the time of injury during 25 weeks;

(5) For the loss of a fourth finger, commonly called the little finger, 66 2/3 percent of the daily wage at the time of injury during 20 weeks;

(6) The loss of the first phalange of the thumb or of any finger, is considered equal to the loss of one-half of the thumb or finger and compensation shall be paid at the prescribed rate during one-half the time specified for the loss of the thumb or finger;

(7) The loss of one and one-half or more phalanges is considered equal to the loss of the entire finger or thumb; but in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

(8) For the loss of a great toe, 66 2/3 percent of the daily wage at the time of injury during 35 weeks;

(9) For the loss of a toe other than a great toe, 66 2/3 percent of the daily wage at the time of injury during 15 weeks;

(10) The loss of the first phalange of any toe is considered equal to the loss of one-half of the toe, and compensation shall be paid at the prescribed rate during one-half the time specified for the loss of the toe;

(11) The loss of one and one-half or more phalanges is considered equal to the loss of the entire toe;

(12) For the loss of a hand, not including the wrist movement, 66 2/3 percent of the daily wage at the time of injury during 195 weeks;

(13) For the loss of a hand, including wrist movement, 66 2/3 percent of the daily wage at the time of injury during 220 weeks;

(14) For the loss of an arm, 66 2/3 percent of the daily wage at the time of injury during 270 weeks;

(15) Amputation of the arm below the elbow is considered the loss of a hand, including wrist movement, if enough of the forearm remains to permit the use of an effective artificial member, otherwise it is considered the loss of an arm;

(16) For the loss of a foot, not including ankle movement, 66 2/3 percent of the daily wage at the time of injury during 140 weeks;

(17) For the loss of a foot, including ankle movement, 66 2/3 percent of the daily wage at the time of injury during 165 weeks;

(18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, 66 2/3 percent of the daily wage at the time of injury during 195 weeks;

(19) For the loss of a leg so close to the hip that no effective artificial member can be used, 66 2/3 percent of the daily wage at the time of injury during 220 weeks;

(20) Amputation of a leg below the knee is considered as equal to the loss of a foot, including ankle movement, if enough of the lower leg remains to permit the use of an effective artificial member, otherwise it is considered as equal to the loss of a leg;

(21) For the loss of an eye, 66 2/3 percent of the daily wage at the time of injury during 160 weeks;

(22) For the complete permanent loss of hearing in one ear, 66 2/3 percent of the daily wage at the time of injury during 85 weeks;

(23) For the complete permanent loss of hearing in both ears, 66 2/3 percent of the daily wage at the time of injury during 170 weeks;

(24) For the loss of an eye and a leg, 66 2/3 percent of the daily wage at the time of injury during 475 weeks;

(25) For the loss of an eye and an arm, 66 2/3 percent of the daily wage at the time of injury during 475 weeks;

(26) For the loss of an eye and a hand, 66 2/3 percent of the daily wage at the time of injury during 450 weeks;

(27) For the loss of an eye and a foot, 66 2/3 percent of the daily wage at the time of injury during 400 weeks;

(28) For the loss of two arms, other than at the shoulder, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(29) For the loss of two hands, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(30) For the loss of two legs, other than so close to the hips that no effective artificial member can be used, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(31) For the loss of two feet, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(32) For the loss of one arm and the other hand, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(33) For the loss of one hand and one foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(34) For the loss of one leg and the other foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(35) For the loss of one leg and one hand, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(36) For the loss of one arm and one foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(37) For the loss of one arm and one leg, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(38) For loss of the voice mechanism, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(39) For head injuries, 66 2/3 percent of the daily wage at the time of injury for that proportion of 500 weeks which is represented by its percentage of the permanent partial disability to the entire body as is determined from competent testimony at a hearing before a compensation judge or as determined by the workers' compensation court of appeals in cases on appeal;

(40) For permanent partial disability resulting from injury to any internal organ until such time as the commissioner of labor and industry shall promulgate a schedule of internal organs and thereafter for internal organs covered by the schedule of internal organs established by the commissioner, 66 2/3 percent of the daily wage at time of injury for that proportion of 500 weeks, not to exceed 500 weeks, as determined by the commissioner, which is the proportionate amount of permanent partial disability caused to the entire body by the injury as is determined from competent testimony at a hearing before a compensation judge or the workers' compensation court of appeals;

(41) For disfigurement or scarring not resulting from the loss of a member or other injury specifically compensated, affecting the employability or advancement opportunity of the injured person in the employment in which he was injured or other employment for which the employee is then qualified or for which the employee has become qualified, 66 2/3 percent of the daily wage at the time of injury during the period the parties agree to or the compensation judge or the workers' compensation court of appeals in cases on appeal determines, not exceeding 90 weeks;

(42) For permanent partial disability resulting from injury to the back, 66 2/3 percent of the daily wage at the time of injury for that proportion of 350 weeks which is represented by the percentage of the permanent partial disability as is determined from competent testimony at a hearing before a compensation judge, the commissioner, or the workers' compensation court of appeals;

(43) When an employee sustains concurrent injuries resulting in concurrent disabilities he shall receive compensation only for the injury which entitled him to the largest amount of compensation, but this does not affect liability for disfigurement affecting the employability of the injured person or liability for the concurrent loss of more than one member, for which members compensations are provided in the specific schedule and in subdivision 5;

(44) In all cases of permanent partial disability it is considered that the permanent loss of the use of a member is equivalent to and draws the same compensation as the loss of that member, but the compensation in and by this schedule provided shall be in lieu of all other compensation in these cases, except as otherwise provided by this section;

In the event a worker has been awarded or is entitled to receive compensation for loss of use of a member under any workers' compensation law, and thereafter sustains loss of the member under circumstances entitling him to compensation therefor under this subdivision, the amount of compensation awarded, or that he is entitled to receive, for the loss of use, is to be deducted from the compensation due under the schedules of this section for the loss of the member, provided, that the amount of compensation due for the loss of the member caused by the subsequent accident is in no case less than 25 percent of the compensation payable under the schedule of this section for the loss of the member;

(45) In cases of permanent partial disability due to injury to a member, resulting in less than total loss of the member, not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the member which the extent of the injury to the member bears to its total loss;

(46) In cases of permanent partial disability caused by simultaneous injury to two or more members, the applicable schedules in this subdivision shall be increased by 15 percent. This clause shall not apply when the injuries are compensated under paragraphs 22 to 37 inclusive, of this subdivision. In cases of partial disability due to injury to both eyes resulting in less than total loss of vision in one or both eyes compensation shall be paid at the prescribed rate during that part of 450 weeks which the extent of the combined injury to both eyes bears to the complete loss of industrial vision;

(47) The commissioner may make or revise rules for the determination of the extent of the impairment of the industrial use of one or both eyes taking into account all primary coordinate factors of vision. These rules shall be made or revised after consultation with experts on industrial vision and after public notice to and hearing of interested parties;

(48) For permanent partial disability resulting from injury to the body as a whole due to burns, $66 \frac{2}{3}$ percent of the daily wage at the time of injury, for that proportion of 350 weeks which is represented by the percentage of the permanent partial disability as is determined from competent testimony at a hearing before a compensation judge or as determined by the workers' compensation court of appeals in cases on appeal, the compensation to be paid in addition to the compensation as employee would otherwise be entitled to for loss of use of a member in accordance with this section;

(49) In all cases of permanent partial disability not enumerated in this schedule the compensation shall be $66 \frac{2}{3}$ percent of the difference between the daily wage of the worker at the time of the injury and the daily wage he is able to earn in his partially disabled condition, subject to a maximum equal to the statewide average weekly wage, and continue during disability, not to exceed 350 weeks; and if the employer does not furnish the worker with work which he can do in his permanently partially disabled condition and he is unable to secure such work with another employer after a reasonably diligent effort, the employee shall be paid at his or her maximum rate of compensation for total disability.

[For text of subs 4 to 6, see M.S.1980]

History: 1981 c 346 s 75

176.102 REHABILITATION.

[For text of subd 1, see M.S.1980]

Subd. 1a. **Surviving spouse.** Upon the request of a qualified dependent surviving spouse, rehabilitation services shall be provided through the rehabilitation services section of the workers' compensation division. For the purposes of this subdivision a qualified dependent surviving spouse is a dependent surviving spouse, as determined under section 176.111, who is in need of rehabilitation assistance to become self-supporting. A spouse who is provided rehabilitation services under this subdivision is not entitled to compensation under subdivision 11.

[For text of subs 2 to 12, see M.S.1980]

History: 1981 c 346 s 76

176.105 COMMISSIONER TO ESTABLISH DISABILITY SCHEDULES.

Subdivision 1. The commissioner of labor and industry shall by rule establish a schedule of degrees of disability resulting from different kinds of injuries.

[For text of subs 2 and 3, see M.S.1980]

History: 1981 c 346 s 77

176.111 DEPENDENTS, ALLOWANCES.

[For text of subs 1 to 5, see M.S.1980]

Subd. 6. **Spouse, no dependent child.** (a) If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the spouse, at the option of the spouse, either:

(1) A lump sum settlement equal to ten full years of compensation at 50 percent of the daily wage at the time of the injury of the deceased, computed without regard to section 176.645; or

MINNESOTA STATUTES 1981 SUPPLEMENT

(2) Weekly workers' compensation benefits at 50 percent of the daily wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.

(b) A dependent surviving spouse who has not accepted a lump sum settlement pursuant to clause (a)(1) and who remarries shall receive the lesser of either:

(1) A lump sum settlement equal to two full years of compensation at 50 percent of the daily wage at the time of the injury of the deceased, computed without regard to section 176.645; or

(2) The remaining weekly workers' compensation benefits pursuant to clause (a)(2) at 50 percent of the daily wage, including adjustments as provided in section 176.645.

Subd. 7. Spouse, one dependent child. (a) If the deceased employee leaves a surviving spouse and one dependent child, there shall be paid to the surviving spouse for the benefit of the spouse and child 60 percent of the daily wage at the time of the injury of the deceased until the child is no longer a dependent as defined in subdivision 1. At that time there shall be paid to the dependent surviving spouse, at the option of the spouse, either:

(1) A lump sum settlement equal to ten full years of compensation at a rate which is $16 \frac{2}{3}$ percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, computed without regard to section 176.645; or

(2) Weekly benefits at a rate which is $16 \frac{2}{3}$ percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, including adjustments as provided in section 176.645.

(b) A surviving spouse who remarries shall receive:

(1) Compensation, for the benefit of the dependent child, according to the allocation provided in subdivision 10, until the child is no longer a dependent as defined in subdivision 1; and

(2) A lump sum settlement, for the benefit of the surviving spouse, equal to two full years of weekly benefits in an amount which equals the difference between the benefit otherwise payable under clause (a) and the amount payable to the dependent child pursuant to clause (b)(1).

Subd. 8. Spouse, two dependent children. (a) If the deceased employee leaves a surviving spouse and two dependent children, there shall be paid to the surviving spouse for the benefit of the spouse and children $66 \frac{2}{3}$ percent of the daily wage at the time of the injury of the deceased until the youngest dependent child is no longer dependent. At that time the dependent surviving spouse shall be paid, at the option of the spouse, either:

(1) A lump sum settlement equal to ten full years of compensation at a rate which is 25 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the last surviving child was a dependent, computed without regard to section 176.645; or

(2) Weekly benefits at a rate which is 25 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, adjusted according to section 176.645.

(b) A surviving spouse who remarries shall receive compensation, for the benefit of the children, allocated according to subdivision 10, until the youngest

dependent child is no longer dependent as defined in subdivision 1 and, for the benefit of the surviving spouse, a lump sum settlement equal to two full years of weekly benefits in an amount which equals the difference between the benefit otherwise payable pursuant to clause (a) and the amount payable to the dependent children allocated according to subdivision 10, computed without regard to section 176.645.

Subd. 8a. **Last weekly benefit payment.** For the purposes of subdivisions 7 and 8, "last weekly workers' compensation benefit payment" means the workers' compensation benefit which would have been payable without the application of subdivision 21.

Subd. 10. **Allocation of compensation.** In all cases where compensation is payable to the surviving spouse for the benefit of the surviving spouse and dependent children, the commissioner, compensation judge, or workers' compensation court of appeals or district court in cases upon appeal shall determine what portion of the compensation applies for the benefit of dependent children and may order that portion paid to a guardian. This subdivision shall not be construed to increase the combined total of weekly government survivor benefits and workers' compensation beyond the limitation established in subdivision 21.

Subd. 11. [Repealed, 1981 c 346 s 145]

[For text of subs 12 to 20, see M.S.1980]

Subd. 21. **Death, benefits; coordination with governmental survivor benefits.** The following provision shall apply to any dependent entitled to receive weekly compensation benefits under this section as the result of the death of an employee, and who is also receiving or entitled to receive benefits under any government survivor program:

The combined total of weekly government survivor benefits and workers' compensation death benefits provided under this section shall not exceed 100 percent of the weekly wage being earned by the deceased employee at the time of the injury causing his death; provided, however, that no state workers' compensation death benefit shall be paid for any week in which the survivor benefits paid under the federal program, by themselves, exceed 100 percent of such weekly wage provided, however, the workers' compensation benefits payable to a dependent surviving spouse shall not be reduced on account of any governmental survivor benefits payable to decedent's children if the support of the children is not the responsibility of the dependent surviving spouse.

For the purposes of this subdivision "dependent" means dependent surviving spouse together with all dependent children and any other dependents. For the purposes of this subdivision, mother's insurance benefits received pursuant to 42 U.S.C., 402 (g), are benefits under a government survivor program.

History: 1981 c 346 s 78-83

176.131 SUBSEQUENT DISABILITY, SPECIAL FUND.

[For text of subs 1 to 9, see M.S.1980]

Subd. 10. The special compensation fund is created for the purposes provided in this chapter in the following manner:

(1) In every case of death of an employee resulting from personal injury arising out of and in the course of employment where there are no persons entitled to monetary benefits of dependency compensation, the employer shall pay to the commissioner the sum of \$5,000 for the benefit of the special compensation fund;

MINNESOTA STATUTES 1981 SUPPLEMENT

in every case of death of an employee resulting from personal injury arising out of and in the course of employment where there are no persons entitled to at least \$5,000 in monetary benefits of dependency compensation, the employer shall pay to the commissioner for the benefit of the special compensation fund the difference between the amounts actually paid for the dependency benefits and \$5,000; but in no event shall the employer pay the commissioner less than \$1,000;

(2) When an employee suffers a personal injury which results in permanent partial disability, temporary total disability, temporary partial disability, permanent total disability or death and which entitles him or his dependents to compensation under sections 176.101 or 176.111, the employer shall, in addition to compensation provided therein, pay to the commissioner for the benefit of the special compensation fund a lump sum without interest deduction equal to a percent of the total compensation determined as provided in this subdivision as soon as the amount payable for the particular injury is determined, or arrived at by agreement of the parties, and the amount is approved by the commissioner.

The provisions of clauses (1) and (2) shall apply to all workers' compensation payments, exclusive of medical costs, paid under sections 176.101 and 176.111 for all injuries or death occurring on or after June 1, 1971.

Personal injuries that occurred prior to June 1, 1971 shall be assessed at the rate in effect on the date of occurrence.

In determining the percentage of the total compensation required to be paid by the employer to the commissioner for the benefit of the special compensation fund as provided in clause (2) beginning September 30, 1981 and each September 30 thereafter, the commissioner shall use the following schedule:

Balance in the Fund	Permissible Range of Rate Adjustment
Less than \$2,000,000	+ 1 percent to + 7 percent
At least \$2,000,000 but less than \$3,000,000	0 percent to + 6 percent
At least \$3,000,000 but less than \$4,000,000	-2 percent to + 4 percent
At least \$4,000,000 but less than \$5,000,000	-5 percent to + 3 percent
At least \$5,000,000 but less than \$6,000,000	-6 percent to + 2 percent
\$6,000,000 or more	-7 percent to + 2 percent

In determining the actual adjustment, the commissioner shall take into account his estimate of the likely amount of expenditures to be made from the fund in the next calendar year.

Sums paid to the commissioner pursuant to the provisions hereof, shall be deposited with the state treasurer for the benefit of the special compensation fund and be used to pay the benefits provided by this chapter. All money heretofore arising from the provisions of this section or similar law shall be transferred to this special compensation fund. Any interest or profit accruing from investment of these sums shall be credited to the special compensation fund.

The state treasurer shall be the custodian of this special fund and the workers' compensation division, compensation judges, the workers' compensation court of appeals or district court in cases before them shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of clause (1) and dependency later is

shown, or if deposit is or has been made pursuant to either clause (1) or (2) by mistake or inadvertence, or under circumstances that justice requires a refund thereof, the state treasurer is authorized to refund the deposit under order of the workers' compensation division, a compensation judge, the workers' compensation court of appeals or a district court. There is appropriated to the persons entitled to the refunds from the fund an amount sufficient to make the refund and payment.

Costs within the department for the accounting, investigation, and legal procedures necessary for the administration of the programs financed by the special compensation fund shall come as appropriated from the fund during each biennium commencing July 1, 1981. Staffing and expenditures related to the administration of the special compensation fund shall be approved through the regular budget and appropriations process.

[For text of subs 11 and 12, see M.S.1980]

History: 1981 c 346 s 84; 1981 c 356 s 327

176.132 SUPPLEMENTARY BENEFITS.

[For text of subd 1, see M.S.1980]

Subd. 2. Amount. (a) The supplementary benefit payable under this section shall be the difference between the amount the employee receives on or after January 1, 1976, under section 176.101, subdivision 1 or subdivision 4, and 65 percent of the statewide average weekly wage as computed annually.

(b) In the event an eligible recipient is currently receiving no compensation or is receiving a reduced level of compensation because of a credit being applied as the result of a third party liability or damages, the employer or insurer shall compute the offset credit as if the individual were entitled to the actual benefit or 65 percent of the statewide average weekly wage as computed annually, whichever is greater. If this results in the use of a higher credit than otherwise would have been applied and the employer or insurer becomes liable for compensation benefits which would otherwise not have been paid, the additional benefits resulting shall be handled according to this section.

(c) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of a valid agreement in settlement of a claim, no supplementary benefit shall be payable under this section. Attorney's fees shall be allowed in settlements of claims for supplementary benefits in accordance with this chapter.

(d) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of prior limitations in the maximum amount payable for permanent total disability or because of reductions resulting from the simultaneous receipt of old age or disability benefits, the supplementary benefit shall be payable for the difference between the actual amount of compensation currently being paid and 65 percent of the statewide average weekly wage as computed annually.

(e) In the event that an eligible recipient is receiving simultaneous benefits from any government disability program, the amount of supplementary benefits payable under this section shall be reduced by five percent. If the individual does not receive the maximum benefits for which he is eligible under other governmental disability programs due to the provisions of 42 U.S.C. 424a (d), this reduction shall not apply.

[For text of subs 2a to 4, see M.S.1980]

History: 1981 c 346 s 85

176.133 ATTORNEY'S FEES, SUPPLEMENTARY BENEFITS.

Attorney's fees may be approved by a compensation judge or by the workers' compensation court of appeals from the supplementary workers' compensation benefits provided by section 176.132 if the case involves the obtaining of supplementary workers' compensation benefits. When such fees are allowed an amount equal to 25 percent of that portion of the fee which is in excess of \$250 shall be added to the employee's benefit as provided in section 176.081 rather than deducted as a portion thereof. The fees shall be determined according to section 176.081.

History: 1981 c 346 s 86

176.136 MEDICAL FEE REVIEW.

The commissioner of insurance shall by rule establish procedures for determining whether or not the charge for a health service is excessive. In order to accomplish this purpose, the commissioner of insurance shall consult with insurers, associations and organizations representing the medical and other providers of treatment services and other appropriate groups. The procedures established by the commissioner of insurance shall limit the charges allowable for medical, chiropractic, podiatric, surgical, hospital and other health care provider treatment or services, as defined and compensable under section 176.135, to the 75th percentile of usual and customary fees or charges based upon billings for each class of health care provider during all of the calendar year preceding the year in which the determination is made of the amount to be paid the health care provider for the billing. The procedures established by the commissioner for determining whether or not the charge for a health service is excessive shall be structured to encourage providers to develop and deliver services for rehabilitation of injured workers. The procedures shall incorporate the provisions of sections 144.701, 144.702, and 144.703 to the extent that the commissioner finds that these provisions effectively accomplish the intent of this section or are otherwise necessary to insure that quality hospital care is available to injured employees. If the commissioner of insurance, a compensation judge, the workers' compensation court of appeals or a district court determines that the charge for a health service or medical service is excessive, no payment in excess of the reasonable charge for that service shall be made under this chapter nor may the provider collect or attempt to collect from the injured employee or any other insurer or government amounts in excess of the amount payable under this chapter; however, the commissioner of insurance shall by rule establish procedures allowing for a provider to appeal such determination. The commissioner of insurance shall contract with a review organization as defined in section 145.61 for the purposes listed in section 145.61, subdivision 5, and report to the legislature by January 15, 1983 and thereafter on January 15 of every odd-numbered year, regarding the delivery of medical and health care services, including rehabilitation services, under the workers' compensation laws of this state.

The commissioner of insurance shall also conduct a study of the qualifications and background of rehabilitation consultants and vendors providing services under section 176.102 for the purpose of determining whether there are adequate professional standards provided, including safeguards to protect against conflicts of interest.

The commissioner of insurance shall adopt temporary rules in order to implement the provisions of this subdivision. Notwithstanding the provisions of section 15.0412, subdivision 4, and any amendments, the temporary rules adopted by the commissioner of insurance pursuant to this subdivision may be extended

for an additional 180 days if the procedures for adoption of a rule pursuant to section 15.0412, subdivisions 4 to 4g, or 4h, and other provisions of the administrative procedure act related to final agency action and rule adoption have not been concluded.

History: 1981 c 346 s 87

176.1361 TESTIMONY OF PROVIDERS.

When a compensation judge or the workers' compensation court of appeals has reason to believe that a medical or other provider of treatment services has submitted false testimony or a false report in any proceeding under this chapter, the compensation judge or the workers' compensation court of appeals shall refer the matter to an appropriate licensing body or other professional certifying organization for review and recommendations. Based upon their recommendation, the commissioner may bar the provider from making an appearance, and disallow the admission into evidence of written reports of the provider, in any proceeding under this chapter for a period not to exceed one year in the first instance and three years in the second instance, and may permanently bar the provider from appearance and his reports from admission in evidence thereafter.

History: 1981 c 346 s 88

176.152 PERMANENT PARTIAL DISABILITY PANEL.

Subdivision 1. **Binding opinion; permanent partial disability disputes.** Prior to a hearing before a compensation judge at which a significant issue of the extent of permanent partial disability is to be determined a permanent partial disability panel shall be constituted to render a determination on the dispute subject to the limitation in subdivisions 7 and 8.

Subd. 2. **Panel list.** The administrator of the workers' compensation court of appeals shall compile and maintain a list of names of physicians, podiatrists, chiropractors and other health care providers qualified to determine the extent of permanent partial disability. Names may be added to the list and removed at any time by the administrator of the workers' compensation court of appeals. In maintaining the list the administrator of the workers' compensation court of appeals shall to the maximum extent possible select persons from varying geographical areas of the state.

Subd. 3. **Panel selection.** When a panel is required to be constituted by subdivision 1 the administrator of the workers' compensation court of appeals shall furnish the employer and employee parties to the dispute a list of seven appropriate health care providers from which the parties shall alternatively strike names until only three remain who shall constitute the panel. If both parties agree, the dispute may be decided by a single health care provider. If the parties are unable to agree on who shall strike the first name, priority shall be decided by a flip of the coin.

Subd. 4. **Report; conclusion.** The compensation judge, or the chief hearing examiner in cases in which a compensation judge has not yet been assigned, shall propound specific written questions to the panel at the time they are notified of their selection. The questions shall be framed in such a manner that answers to them shall resolve the dispute as to the extent of permanent partial disability. The panel's report shall be binding upon any compensation judge before whom a hearing may be held subsequent to the panel's report, but may be reviewed by the workers' compensation court of appeals or supreme court, only if the report is found to be arbitrary, capricious or based on fraud, in which case the workers'

MINNESOTA STATUTES 1981 SUPPLEMENT

compensation court of appeals or supreme court shall remand the matter to a compensation judge for the seating of a new panel.

Subd. 5. **Exam; report.** At least one member of the panel shall personally examine the employee within 30 days of the panel's selection. After reviewing the examination report and all other available pertinent information the panel shall report its conclusions to the compensation judge within 45 days after their selection. The compensation judge may extend the time limit for good cause. The report of the panel shall include the examination report and a record of any other evidence or information considered by the panel.

Subd. 6. **Costs; payment.** Any physician, podiatrist, chiropractor or other health care provider who agrees to serve on a panel constituted pursuant to this section shall be deemed to agree that any dispute concerning his fees for serving on the panel shall be decided by the compensation judge hearing the case. The judge's decision shall be binding on the health care provider. A consent form to this effect shall be provided for the signature of the health care provider. No fee shall be approved which is excessive under the standards issued pursuant to section 176.136 for similar services. The employer shall pay all the panel members' fees, unless the employee has proceeded in bad faith, in which case the employee may be ordered to pay the fees.

Subd. 7. **Pilot project; report to legislature and governor.** The administrator of the workers' compensation court of appeals shall establish the permanent partial disability panel provided for in this section on a pilot basis in three counties of his choice, including at least one rural county. The administrator of the workers' compensation court of appeals shall report to the legislature and governor by January 1, 1983, on the number of cases reviewed, the number of health care providers participating, the number of cases settled prior to any hearing before a compensation judge, the cost of the program and his recommendations concerning the panel.

Subd. 8. **Limitation.** This section shall operate in lieu of section 176.155, subdivision 2, in the counties in which the medical panel is established pursuant to subdivision 7.

History: 1981 c 346 s 89

176.161 ALIEN DEPENDENTS.

Subdivision 1. **Residing outside United States.** In case a deceased employee for whose injury or death compensation is payable leaves surviving him an alien dependent residing outside the United States the commissioner shall direct the payment of all compensation due the dependent to be made to the duly accredited consular officer of the country of which the beneficiary is a citizen residing within the state, or to his designated representative residing within the state; or, if the commissioner believes that the interests of the dependent will be better served and at any time prior to the final settlement the dependent files with the commissioner a power of attorney designating any other suitable person residing in this state to act as attorney in fact in such proceedings, the commissioner may appoint such person. If it appears necessary to institute proceedings to enforce payment of compensation due the dependent, the commissioner may permit the consular officer to institute these proceedings. If during the pendency of these proceedings, such power of attorney is filed by the alien dependent, the commissioner shall then determine whether such attorney in fact be substituted to represent such dependent or if the consular officer or his representative continue therein. The person so appointed may carry on proceedings to settle all claims for compensation and

receive for distribution to such dependent all compensation arising under this chapter. The settlement and distribution of the funds shall be made only on the written order of the commissioner. The person so appointed shall furnish a bond satisfactory to the commissioner, conditioned upon the proper application of the money received by him. Before the bond is discharged, the person so appointed shall file with the commissioner a verified account of his receipts and disbursements of such compensation.

[For text of subds 2 and 3, see M.S.1980]

History: 1981 c 346 s 90

176.181 INSURANCE.

[For text of subd 1, see M.S.1980]

Subd. 2. Compulsory insurance; self-insurers. (1) Every employer, except the state and its municipal subdivisions, liable under this chapter to pay compensation shall insure payment of compensation with some insurance carrier authorized to insure workers' compensation liability in this state, or obtain a written order from the commissioner of insurance exempting the employer from insuring his liability for compensation and permitting him to self-insure the liability. The terms, conditions and requirements governing self-insurance shall be established by the commissioner pursuant to chapter 15. The commissioner of insurance shall also adopt, pursuant to clause (2)(c), rules permitting two or more employers, whether or not they are in the same industry, to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as group self-insurers. With the approval of the commissioner of insurance, any employer may exclude medical, chiropractic and hospital benefits as required by this chapter. An employer conducting distinct operations at different locations may either insure or self-insure the other portion of his operations which may be determined by the commissioner of insurance to be a distinct and separate risk. An employer desiring to be exempted from insuring his liability for compensation shall make application to the commissioner of insurance, showing his financial ability to pay the compensation, whereupon by written order the commissioner of insurance may make an exemption as he deems proper. The commissioner of insurance may require further statements of financial ability of the employer to pay compensation. Upon ten days written notice the commissioner of insurance may revoke his order granting an exemption, in which event the employer shall immediately insure his liability. As a condition for the granting of an exemption the commissioner of insurance may require the employer to furnish security the commissioner of insurance considers sufficient to insure payment of all claims under this chapter. If the required security is in the form of currency or negotiable bonds, the commissioner of insurance shall deposit it with the state treasurer. In the event of any default upon the part of a self-insurer to abide by any final order or decision of the commissioner of labor and industry directing and awarding payment of compensation and benefits to any employee or the dependents of any deceased employee, then upon at least ten days notice to the self-insurer, the commissioner of insurance may by written order to the state treasurer require him to sell the pledged and assigned securities or a part thereof necessary to pay the full amount of any such claim or award with interest thereon. This authority to sell may be exercised from time to time to satisfy any order or award of the commissioner of labor and industry or any judgment obtained thereon. When securities are sold the money obtained shall be deposited in the state treasury to the credit of the commissioner of insurance and awards made against any such self-insurer by the

commissioner of insurance shall be paid to the persons entitled thereto by the state treasurer upon warrants prepared by the commissioner of insurance and approved by the commissioner of finance out of the proceeds of the sale of securities. Where the security is in the form of a surety bond or personal guaranty the commissioner of insurance, at any time, upon at least ten days notice and opportunity to be heard, may require the surety to pay the amount of the award, the payments to be enforced in like manner as the award may be enforced.

(2)(a) No association, corporation, partnership, sole proprietorship, trust or other business entity shall provide services in the design, establishment or administration of a group self-insurance plan under rules adopted pursuant to this subdivision unless it is licensed to do so by the commissioner of insurance. An applicant for a license shall state in writing the type of activities it seeks authorization to engage in and the type of services it seeks authorization to provide. The license shall be granted only when the commissioner of insurance is satisfied that the entity possesses the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered. The commissioner of insurance may issue a license subject to restrictions or limitations, including restrictions or limitations on the type of services which may be supplied or the activities which may be engaged in. The license is for a two year period.

(b) To assure that group self-insurance plans are financially solvent, administered in a fair and capable fashion, and able to process claims and pay benefits in a prompt, fair and equitable manner, entities licensed to engage in such business are subject to supervision and examination by the commissioner of insurance.

(c) To carry out the purposes of this subdivision, the commissioner of insurance may promulgate administrative rules, including emergency rules, pursuant to sections 15.0411 to 15.052. These rules may:

(i) establish reporting requirements for administrators of group self-insurance plans;

(ii) establish standards and guidelines to assure the adequacy of the financing and administration of group self-insurance plans;

(iii) establish bonding requirements or other provisions assuring the financial integrity of entities administering group self-insurance plans;

(iv) establish standards, including but not limited to minimum terms of membership in self-insurance plans, as necessary to provide stability for those plans;

(v) establish standards or guidelines governing the formation, operation, administration and dissolution of self-insurance plans; and

(vi) establish other reasonable requirements to further the purposes of this subdivision.

Subd. 3. Failure to insure, penalty. Any employer who fails to comply with the provisions of subdivision 2 to secure payment of compensation is liable to the state of Minnesota for a penalty of \$100, if the number of uninsured employees in his employment is less than five and for a penalty of \$400 if the number of such uninsured employees in his employment is five or more. If the commissioner determines that the failure to comply with the provisions of subdivision 2 was willful and deliberate, the employer shall be liable to the state of Minnesota for a penalty of \$500, if the number of uninsured employees in his employment is less than five, and for a penalty of \$2,000 if the number of his uninsured employees is five or more. If the employer continues his noncompliance, he is liable for five times the lawful premium for compensation insurance for such employer for the

period he fails to comply with such provisions, commencing ten days after notice has been served upon him by the commissioner of the department of labor and industry by certified mail. These penalties may be recovered jointly or separately in a civil action brought in the name of the state by the attorney general in any court having jurisdiction. Whenever any such failure occurs the commissioner of the department of labor and industry shall immediately certify the fact thereof to the attorney general. Upon receipt of such certification the attorney general shall forthwith commence and prosecute such action. All penalties recovered by the state in any such action shall be paid into the state treasury and credited to the special compensation fund. If an employer fails to comply with the provisions of subdivision 2, to secure payment of compensation after having been notified of his duty, the attorney general, upon request of the commissioner, may proceed against the employer in any court having jurisdiction for an order restraining him from having any person in his employment at any time when he is not complying with the provisions of subdivision 2.

[For text of subs 4 and 5, see M.S.1980]

Subd. 6. Financial statements. No employer shall be required to provide financial statements certified by an "independent certified public accountant" or "certified public accountant" as a condition of approval for group self-insurance.

History: 1981 c 346 s 91-93

176.182 BUSINESS LICENSES OR PERMITS; COVERAGE REQUIRED.

Every state or local licensing agency shall withhold the issuance of a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2.

Neither the state nor any governmental subdivision thereof shall enter into any contract before receiving from all other contracting parties acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2.

History: 1981 c 346 s 94

176.183 UNINSURED AND SELF-INSURED EMPLOYERS; BENEFITS TO EMPLOYEES AND DEPENDENTS; LIABILITY OF EMPLOYER.

[For text of subs 1 and 1a, see M.S.1980]

Subd. 2. The commissioner of labor and industry, in accordance with the terms of the order awarding compensation, shall pay compensation to the employee or his dependent from the special compensation fund. The commissioner of labor and industry shall certify to the commissioner of finance and to the legislature annually the total amount of compensation paid from the special compensation fund under subdivisions 1² and 1a. The commissioner of finance shall upon proper certification reimburse the special compensation fund from the general fund the total amount certified as paid under this section.

History: 1981 c 356 s 328

176.191 DISPUTE BETWEEN TWO OR MORE EMPLOYERS OR INSURERS REGARDING LIABILITY.

Subdivision 1. Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two or more insurers as to

MINNESOTA STATUTES 1981 SUPPLEMENT

which is liable for payment, the commissioner, compensation judge, or workers' compensation court of appeals upon appeal shall direct, unless action is taken under subdivision 2, that one or more of the employers or insurers make payment of the benefits pending a determination of liability.

When liability has been determined, the party held liable for the benefits shall be ordered to reimburse any other party for payments which the latter has made, including interest at the rate of 12 percent a year. The claimant shall also be awarded a reasonable attorney fee, to be paid by the party held liable for the benefits.

An order directing payment of benefits pending a determination of liability may not be used as evidence before a compensation judge, the workers' compensation court of appeals, or court in which the dispute is pending.

Subd. 2. Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two or more insurers as to which is liable for payment, the commissioner shall authorize, unless action is taken under subdivision 1, the special compensation fund established in section 176.131 to make payment of the benefits pending a determination of liability.

The personal injury for which the commissioner shall order compensation from the special fund is not limited by section 176.131, subdivision 8.

When liability has been determined, the party held liable for benefits shall be ordered to reimburse the special compensation fund for payments made, including interest at the rate of 12 percent a year.

Subd. 3. If a dispute exists as to whether an employee's injury is compensable under this chapter and the employee is otherwise covered by an insurer pursuant to chapters 62A, 62C and 62D, that insurer shall pay any medical costs incurred by the employee for the injury and shall make any disability payments otherwise payable by that insurer in the absence of or in addition to workers' compensation liability. If the injury is subsequently determined to be compensable pursuant to this chapter, the workers' compensation insurer shall be ordered to reimburse the insurer that made the payments for all payments made under this subdivision by the insurer, including interest at a rate of 12 percent a year.

Subd. 4. If the employee's medical expenses for a personal injury are paid pursuant to any program administered by the commissioner of public welfare, or he receives subsistence or other payments pursuant to such a program, and it is subsequently determined that the injury is compensable pursuant to this chapter, the workers' compensation insurer shall reimburse the commissioner of public welfare for the payments made, including interest at a rate of 12 percent a year.

Amounts paid to an injured employee pursuant to such a program and attributable to the personal injury shall be deducted from any settlement or award of compensation or benefits under this chapter. The insurer shall attempt, with due diligence, to ascertain whether payments have been made to an injured employee pursuant to such a program prior to any settlement or issuance of a binding award and shall notify the commissioner when such payments have been made.

History: 1981 c 346 s 95

176.221 PAYMENT OF COMPENSATION AND TREATMENT CHARGES, COMMENCEMENT.

Subdivision 1. **Commencement of payment.** Within 14 days of notice to or knowledge by the employer of an injury compensable under this chapter the

payment of compensation due pursuant to section 176.101, subdivision 1, shall commence. Commencement of payment by an employer or insurer does not waive any rights to any defense the employer may have on any claim or incident either with respect to the compensability of the claim under chapter 176 or the amount of the compensation due. Where there are multiple employers, the first employer shall pay, unless it is shown that the injury has arisen out of employment with the second or subsequent employer. When the employer determines that the disability is not a result of a personal injury, payment of compensation may be discontinued upon notice of discontinuance pursuant to section 176.241. Upon the determination, payments made may be recovered by the employer if the commissioner finds that the employee's claim of work related disability was not made in good faith.

Subd. 2. Grant of extension. Upon application made within 30 days after the date on which the first payment was due, the commissioner may grant an extension of time within which to determine liability. The extension shall not exceed 30 days.

Subd. 3. Payments to special compensation fund. Where an employer or insurer fails to begin payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9, or to file a denial of liability, or to request an extension of time within 30 days after the date on which the first payment was due, he shall pay to the special compensation fund an amount equal to the total amount of compensation to which the employee is entitled because of the injury. In addition, each day subsequent to the end of the period and until a compensation payment is made to the injured employee, the person responsible for payment of compensation shall pay to the special compensation fund an amount equal to the total compensation to which the injured employee is entitled.

Subd. 4. Failure to make payments after extension. Where an employer or insurer has been granted an extension of time within which to determine liability and fails to begin payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 or to file a denial of liability within such extended period, he shall make the payments provided in subdivision 3.

Subd. 5. Double payments to special compensation fund. Where an employer or insurer has failed to make the payments required by subdivision 3 or subdivision 4 within 30 days from the end of the period or the extended period, the division may require him to pay to the special compensation fund, each day subsequent to the end of the period and until a compensation payment is made to the injured employee, a sum equal to double the total amount of compensation to which the employee is entitled because of the injury. In addition, the person responsible for compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 shall pay to the special compensation fund an amount equal to the total amount of compensation to which the employee is entitled.

Subd. 6. Assessment of penalties. The division shall assess the penalty payments provided for by subdivisions 3 to 5, and any increase in benefit payments provided by section 176.225, subdivision 5, against either the employer or the insurer depending upon to whom the delay is attributable in making payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9. The insurer is not liable for a penalty payment assessed against the employer.

MINNESOTA STATUTES 1981 SUPPLEMENT

Subd. 7. **Interest.** Any payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 not made when due shall bear interest at the rate of eight percent per annum from the due date to the date the payment is made.

Subd. 8. **Method and timeliness of payment.** Payment of compensation under this chapter shall be by immediately payable negotiable instrument, or if by any other method, arrangements shall be available to provide for the immediate negotiability of the payment instrument.

All payment of compensation shall be made within 14 days of an appropriate order by the division, unless the order is to be appealed, or where a different time period is provided by this chapter.

History: 1981 c 346 s 96

176.225 ADDITIONAL AWARD AS PENALTY.

[For text of subs 1 to 4, see M.S.1980]

Subd. 5. **Penalty.** Where the employer is guilty of inexcusable delay in making payments, the payments which are found to be delayed shall be increased by 10 percent. Withholding amounts unquestionably due because the injured employee refuses to execute a release of his right to claim further benefits will be regarded as inexcusable delay in the making of compensation payments. If any sum ordered by the department to be paid is not paid when due, and no appeal of the order is made, the sum shall bear interest at the rate of 12 percent per annum. Any penalties paid pursuant to this section shall not be considered as a loss or expense item for purposes of a petition for a rate increase made pursuant to chapter 79.

History: 1981 c 346 s 97

176.231 REPORT OF DEATH OR INJURY TO COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY.

[For text of subd 1, see M.S.1980]

Subd. 2. **Initial report, written report.** Where subdivision 1 requires an injury to be reported within 48 hours, the employer may make his initial report by telephone, telegraph, or personal notice, and file a written report of the injury within seven days from its occurrence or within such time as the commissioner of labor and industry designates. All written reports of injuries required by subdivision 1 shall include the date of injury, amounts of payments made, if any, and the date of the first payment. The reports shall be in quadruplicate on a form designed by the commissioner, with two copies to the commissioner and one to the insurer.

If an insurer or self insurer repeatedly fails to pay benefits within three days of the due date, pursuant to section 176.221, the insurer or self insurer shall be ordered by the commissioner to explain, in person, the failure to pay benefits due in a reasonable time. If prompt payments are not thereafter made, the commissioner shall refer the insurer or self insurer to the commissioner of insurance for action pursuant to section 176.225, subdivision 4.

[For text of subs 3 to 6, see M.S.1980]

Subd. 7. **Medical reports.** If requested by the division, a compensation judge, the workers' compensation court of appeals, or any member or employee

thereof an employer, insurer, or employee shall file with the commissioner the original or a verified copy of any medical report in his possession which bears upon the case and shall also file a verified copy of the same report with the agency or individual who made the request.

[For text of subds 8 to 10, see M.S.1980]

History: 1981 c 346 s 98,99

176.241 NOTICE TO DIVISION OF INTENTION TO DISCONTINUE COMPENSATION PAYMENTS.

Subdivision 1. Necessity for notice and showing; contents. Where an employee claims that the right to compensation continues, the employer may not discontinue payment of compensation until he provides the employee with notice in writing of his intention to do so, together with a statement of facts clearly indicating the reasons for the discontinuance. A copy of the notice shall be provided to the division by the employer.

The notice to the employee and the copy to the division shall state the date of intended discontinuance and the reason for the action. The notice to the employee and the copy to the division shall be accompanied by a statement of facts in support of the discontinuance of compensation payments and whatever medical reports are in the possession of the employer bearing on the physical condition of the employee at the time of the proposed discontinuance.

Subd. 2. Continuance of employer's liability; suspension. Except where the commissioner orders otherwise, until the copy of the notice and reports have been filed with the division, the liability of the employer to make payments of compensation continues.

When the division has received a copy of the notice of discontinuance, the statement of facts and available medical reports, the duty of the employer to pay compensation is suspended pending an investigation, hearing, and determination of the matter by the division as provided in the following subdivisions.

Subd. 3. Copy of notice to employee, investigation, hearing. When the employer has reason to believe compensation may be terminated within the requirements of this chapter, notice shall be given to the employee informing the employee of his right to object to the discontinuance and providing instructions as to how to contact the employer or insurer regarding the discontinuance and the procedures related to initiation of a claim. The commissioner shall make an investigation to determine whether the right to compensation has terminated. If it appears from the investigation that the right to compensation may not have terminated, the commissioner shall refer the matter to the chief hearing examiner in order that a hearing before a compensation judge may be scheduled, to determine the right of the employee, or his dependent, to further compensation.

The hearing shall be held within a reasonable time after the division has received the notice of discontinuance. The compensation judge shall give eight days notice of the hearing to interested parties.

[For text of subd 4, see M.S.1980]

History: 1981 c 346 s 100-102

176.262 APPOINTMENT OF COMPENSATION JUDGES; LIMITATION.

No attorney acting pursuant to section 176.261 shall be hired or appointed as a compensation judge for a period of two years following termination of service with the division.

History: 1981 c 346 s 103

176.291 DISPUTES AND DEFAULTS; PROCEDURE.

Where there is a dispute as to a question of law or fact in connection with a claim for compensation, or where there has been a default in the payment of compensation for a period of ten days, a party may present a verified petition to the commissioner stating the matter in dispute or the fact of default.

The petition shall also state:

- (1) names and residence of parties;
- (2) facts relating to the employment at the time of injury, including amount of wages received;
- (3) extent and character of injury;
- (4) notice to or knowledge by employer of injury;
- (5) facts which the commissioner by rule requires; and,
- (6) such other facts as are necessary for the information of the commissioner, a compensation judge or the workers' compensation court of appeals.

History: 1981 c 346 s 104

176.301 DETERMINATION OF ISSUES.

Subdivision 1. **Trial by court; reference to commissioner.** When issue has been joined in the district court action, the court may try the action itself without a jury, or refer the matter to the commissioner. In the latter case, the commissioner shall refer the matter to the chief hearing examiner for assignment to a compensation judge. The compensation judge shall report his findings and decisions to the district court. The court may approve or disapprove such decision in the same manner as it approves or disapproves the report of a referee. The court shall enter judgment upon such decision.

[For text of subd 2, see M.S.1980]

History: 1981 c 346 s 105

176.305 PETITIONS FILED WITH THE WORKERS' COMPENSATION DIVISION.

Subdivision 1. **Hearings on petitions.** The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. The original petition shall then be filed with the commissioner together with an appropriate affidavit of service. When any petition has been filed with the workers' compensation division, the commissioner shall, within ten days, refer the matter presented by the petition to a settlement judge. The settlement judge shall schedule a settlement conference if appropriate within 60 days. If a settlement conference is not appropriate, or if such a conference or conferences do not result in progress toward a settlement, the settlement judge shall certify the matter for a hearing before a compensation judge and shall refer the matter to the chief hearing examiner to be heard by a compensation judge.

Subd. 2. **Copy of petition.** The commissioner shall deliver the original petition and answer, after certification for a hearing before a compensation judge by a settlement judge, to the office of administrative hearings for assignment to a compensation judge.

Subd. 3. **Testimony.** Where the chief hearing examiner has substituted a compensation judge originally assigned to hear a matter, the testimony taken before the substitute compensation judge shall be considered as though taken before the judge before whom it was originally assigned.

History: 1981 c 346 s 106

176.306 SCHEDULED HEARINGS.

Subdivision 1. **Chief hearing examiner.** The chief hearing examiner shall schedule workers' compensation hearings on as regular a schedule as may be practicable in no fewer than six widely separated locations throughout the state, including at least four locations outside of the seven county metropolitan area and Duluth, for the purpose of providing a convenient forum for parties to a compensation hearing and shall maintain a permanent office in Duluth staffed by at least one compensation judge.

Subd. 2. **District administrators; clerks of court.** The judicial district administrators or the clerks of court of the county or district courts nearest to the locations selected by the chief hearing examiner pursuant to subdivision 3 shall provide suitable hearing rooms at the times and places agreed upon for the purpose of conducting workers' compensation hearings.

History: 1981 c 346 s 107

176.311 REASSIGNMENT OF PETITION FOR HEARING.

Where a petition is heard before a compensation judge, at any time before an award or order has been made in such proceeding, the chief hearing examiner may reassign the petition for hearing before another compensation judge.

History: 1981 c 346 s 108

176.321 ANSWER TO PETITION.

Subdivision 1. **Filing, service.** Within twenty days after he has been served with a copy of the petition, an adverse party may file a verified answer to the petition. When he files the answer, the party shall also serve a copy on the petitioner or his attorney.

Within five days after he has been served with a copy of the answer, the petitioner may file a verified reply admitting or denying new matter set forth in the answer.

[For text of subd 2, see M.S.1980]

Subd. 3. **Extension of time in which to file answer.** Upon showing of cause, the commissioner of the department of labor and industry may extend the time in which to file an answer or reply for not more than 30 additional days. The time to file an answer or reply may also be extended upon agreement of the petitioner. If an answer is not filed and there has been no extension by order of the commissioner or by agreement, the failure to file an answer shall be treated as a default.

History: 1981 c 346 s 109,110

176.331 AWARD BY DEFAULT.

Where an adverse party has failed to file and serve an answer, if the petitioner presents proof of such fact, the compensation judge shall enter whatever award or order to which petitioner is entitled on the basis of the facts alleged in the petition, but the compensation judge may require proof of an alleged fact. If the commissioner requires such proof, he shall request the chief hearing examiner to assign the matter to a compensation judge to summarily hear and determine the same and to promptly make an award or order.

Where in such a default case the petition does not state facts sufficient to support an award, the compensation judge shall give the petitioner or his attorney

written notice of this deficiency. The petitioner may thereupon file another petition as in the case of an original petition.

History: 1981 c 346 s 111

176.341 HEARING ON PETITION.

Subdivision 1. **Time.** When the reply has been filed or the time has expired in which to file a reply the chief hearing examiner shall fix a time and place for hearing the petition. The hearing shall be held as soon as practicable and at a time and place determined by the chief hearing examiner to be the most convenient for the parties, keeping in mind the intent of chapter 176 as expressed in section 176.001 and the requirements of section 176.306.

[For text of subds 2 and 3, see M.S.1980]

History: 1981 c 346 s 112

176.351 TESTIMONIAL POWERS.

Subdivision 1. **Oaths.** The compensation judge to whom a petition has been assigned for hearing shall administer an oath to each witness. The commissioner may also administer an oath when required in the performance of his duties.

Subd. 2. **Subpoenas.** Upon his own initiative, or upon written request of an interested party, the commissioner or compensation judge before whom a hearing is held may issue a subpoena for the attendance of a witness or the production of such books, papers, records and documents as are material in the cause and are designated in the subpoena. The commissioner may also issue a subpoena for the attendance of a witness or the production of such books, papers, records, and documents as are material in the cause pending and are designated in the subpoena.

Subd. 3. **Advancement of fees and costs.** The person who applies for issuance of a subpoena shall advance the required service and witness fees. The commissioner shall pay for the attendance of witnesses who are subpoenaed by him. The chief hearing examiner shall pay for the attendance of witnesses who are subpoenaed by a compensation judge. The fees are the same as the service and witness fees in civil actions in district court.

Subd. 4. **Proceedings as for contempt of court.** Where a person does not comply with an order or subpoena, the commissioner or the commissioner or compensation judge concerned, may apply to the district court in the county in which the petition is pending for issuance of an order compelling obedience. Upon such an application, the district court shall compel obedience to the order or subpoena by attachment proceedings as for contempt in the case of disobedience of a similar order or subpoena issued by the district court.

History: 1981 c 346 s 113

176.371 AWARD OR DISALLOWANCE OF COMPENSATION.

The compensation judge to whom a petition has been assigned for hearing, shall hear all competent evidence produced at the hearing, and, as soon after the hearing as possible, make findings of fact, conclusions of law, and award or disallowance of compensation or other order as the pleadings, evidence, this chapter and rule require.

History: 1981 c 346 s 114

176.381 REFERENCE OF QUESTIONS OF FACT.

Subdivision 1. **Hearing before workers' compensation court of appeals.** In the hearing of any matter before the workers' compensation court of appeals, the chief judge of the workers' compensation court of appeals may refer any question of fact to the chief hearing examiner for assignment to a compensation judge either to hear evidence and report it to the workers' compensation court of appeals or to hear evidence and make findings of fact and report them to the workers' compensation court of appeals. The workers' compensation court of appeals shall notify the commissioner of any matter referred to a compensation judge under this subdivision.

Subd. 2. **Hearing before compensation judge.** In the hearing of any petition before a compensation judge, the chief hearing examiner may refer any question of fact to another compensation judge to hear evidence and report it to the original compensation judge.

History: 1981 c 346 s 115

176.391 INVESTIGATIONS.

Subdivision 1. **Power to make.** Before, during, or after any hearing, the commissioner or a compensation judge may make an independent investigation of the facts alleged in the petition or answer.

Subd. 2. **Appointment of physicians, surgeons, and other experts.** The compensation judge assigned to a matter, or the commissioner, may appoint one or more neutral physicians or surgeons from the list established by the commissioner to examine the injury of the employee and report thereon except as provided otherwise pursuant to section 176.1361. Where necessary to determine the facts, the services of other experts may also be employed.

Subd. 3. **Reports.** The report of a physician, surgeon, or other expert shall be filed with the commissioner and the compensation judge assigned to the matter if any. The report shall be made a part of the record of the case and be open to inspection as such.

Subd. 4. **Compensation.** The commissioner or compensation judge shall fix the compensation of a physician, surgeon, or other expert whose services are employed under this chapter. This compensation shall be paid initially out of the funds appropriated for the maintenance of the workers' compensation division, but shall be taxed as costs to either party, or both, or otherwise, as the commissioner or compensation judge directs.

Where a sum which has been taxed to a party has not been paid, it may be collected in the same manner as are costs generally.

History: 1981 c 346 s 116

176.401 HEARINGS PUBLIC.

All hearings before a compensation judge are public.

History: 1981 c 346 s 117

176.411 RULES OF EVIDENCE, PLEADING, AND PROCEDURE.

Subdivision 1. **Conduct of hearings and investigations.** Except as otherwise provided by this chapter, when a compensation judge makes an investigation or conducts a hearing, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure. The investigation or hearing shall be conducted in a manner to ascertain the substantial rights of the parties.

Findings of fact shall be based upon competent evidence only and shall comport with section 176.021.

Subd. 2. **Depositions.** Except where a compensation judge orders otherwise, depositions may be taken in the manner which the law provides for depositions in civil actions in district court.

[For text of subd 3, see M.S.1980]

History: 1981 c 346 s 118,119

176.421 APPEALS TO WORKERS' COMPENSATION COURT OF APPEALS.

Subdivision 1. **Time for taking; grounds.** When a petition has been heard before a compensation judge, within 30 days after a party in interest has been served with notice of an award or disallowance of compensation, or other order affecting the merits of the case, he may appeal to the workers' compensation court of appeals on any of the following grounds:

- (1) The order does not conform with this chapter; or
- (2) The compensation judge committed an error of law; or
- (3) The findings of fact and order were unwarranted by the evidence; or
- (4) The findings of fact and order were procured by fraud, or coercion, or other improper conduct of a party in interest.

[For text of subds 2 and 3, see M.S.1980]

Subd. 4. **Service and filing of notice; cost of transcript.** Within the 30 day period for taking an appeal, the appellant shall:

- (1) Serve a copy of the notice of appeal on each adverse party;
- (2) File the original notice, with proof of service by admission or affidavit, with the chief hearing examiner;
- (3) In order to defray the cost of the transcript of the proceedings appealed from, pay to the chief hearing examiner the sum of \$10 or so much of that sum as is necessary to present the question raised on the appeal.

The appellant is liable for the cost of the transcript in excess of \$10, but is entitled to a refund of any part of that sum not used to pay the cost of the transcript.

Upon a showing of cause, the chief hearing examiner may direct that a transcript be prepared without expense to the appellant, in which case the cost of the transcript shall be paid by the office of administrative hearings.

Subd. 5. **Transcript.** When the notice of appeal has been filed with the chief hearing examiner and the transcription fee has been paid, the chief hearing examiner shall immediately prepare a typewritten transcript of the proceedings. The official reporter or other person designated by the chief hearing examiner who transcribes the proceedings shall certify to their correctness.

Subd. 6. **Powers of workers' compensation court of appeals on appeal.** On an appeal taken under this section, the workers' compensation court of appeals may:

- (1) disregard the findings of fact which the compensation judge has made;
- (2) examine the record;
- (3) substitute for the findings of fact made by the compensation judge such findings as the total evidence requires; and,

(4) make an award or disallowance of compensation or other order as the facts and findings require.

Subd. 7. **Record of proceedings.** At the division's own expense, the commissioner shall make a complete record of all proceedings before himself. The commissioner shall provide a stenographer to make a record of the proceedings before him.

The commissioner shall furnish a transcript of these proceedings to any person who requests it and who pays a reasonable charge and shall fix the amount of this charge.

History: 1981 c 346 s 120-124

176.431 APPEAL BASED ON ERROR OF LAW BY COMPENSATION JUDGE.

Subdivision 1. **Hearing.** Where an appeal has been taken to the workers' compensation court of appeals under this chapter on the ground that the compensation judge has made an error of law, the workers' compensation court of appeals shall grant a hearing, based on the record before the compensation judge, with an opportunity for oral argument. The chief hearing examiner shall notify the workers' compensation court of appeals promptly of the taking of any appeal.

The workers' compensation court of appeals shall fix a time and place for the hearing and shall give each party in interest at least five days written notice.

[For text of subd 2, see M.S.1980]

History: 1981 c 346 s 125

176.441 APPEAL BASED ON FRAUD OR INSUFFICIENCY OF EVIDENCE.

Subdivision 1. **Disposition by workers' compensation court of appeals.** Where an appeal has been taken to the workers' compensation court of appeals under this chapter, on either the ground that the findings or order or both were unwarranted by the evidence, or were procured by fraud, coercion, or other improper conduct of a party, the workers' compensation court of appeals may:

- (1) grant a hearing based on the record before the compensation judge; or,
- (2) remand the petition for a de novo hearing or a rehearing and notify the chief hearing examiner, who shall assign the de novo hearing or the rehearing before a compensation judge; or,
- (3) sustain, reverse, or modify the order appealed from.

Subd. 2. *[Repealed, 1981 c 346 s 145]*

History: 1981 c 346 s 126

176.461 SETTING ASIDE AWARD.

Except where a writ of certiorari has been issued by the supreme court and the matter is still pending in that court or where as a matter of law the determination of the supreme court cannot be subsequently modified, the workers' compensation court of appeals, for cause, at any time after an award, upon application of either party and not less than five days after written notice to all interested parties, may set the award aside and grant a new hearing and refer the matter for a determination on its merits to the chief hearing examiner for assignment to a compensation judge, who shall make such findings of fact, conclusions of law, and award or disallowance of compensation or other order as the pleadings and the evidence produced and the provisions of this chapter shall require.

History: 1981 c 346 s 127

176.471 REVIEW BY SUPREME COURT ON CERTIORARI.

[For text of subs 1 and 2, see M.S.1980]

Subd. 3. **Service of writ and bond; filing fee.** To effect a review upon certiorari, the party shall serve a writ of certiorari and a bond upon the administrator of the workers' compensation court of appeals within the 30 day period referred to in subdivision 1. The party shall also at this time pay to the administrator the fee prescribed by rule 103.01 of the rules of civil appellate procedure which shall be disposed of in the manner provided by that rule.

[For text of subd 4, see M.S.1980]

Subd. 5. **Bond.** The bond required by subdivision 3 shall be executed in such amount and with such sureties as the workers' compensation court of appeals directs and approves. The bond shall be conditioned to pay the cost of the review.

Subd. 6. **Transmittal of fee and return.** When the writ of certiorari has been served upon the administrator of the workers' compensation court of appeals, the bond has been filed, and the filing fee has been paid, the administrator shall immediately transmit to the clerk of the supreme court that filing fee and the return to the writ of certiorari and bond.

[For text of subd 7, see M.S.1980]

Subd. 8. **Return of proceedings transmitted to court.** Within 30 days after the writ of certiorari, bond, and filing fee have been filed with the administrator of the workers' compensation court of appeals, the administrator shall transmit to the clerk of the supreme court a true and complete return of the proceedings of the workers' compensation court of appeals under review, or such part of those proceedings as is necessary to allow the supreme court to review properly the questions presented.

The workers' compensation court of appeals shall certify the return of the proceedings under its seal. The petitioner or relator shall pay to the administrator of the workers' compensation court of appeals the reasonable expense of preparing the return.

[For text of subs 9 and 10, see M.S.1980]

History: 1981 c 346 s 128-131

176.491 STAY OF PROCEEDINGS PENDING DISPOSITION OF CASE.

Where a writ of certiorari has been perfected under this chapter, it stays all proceedings for the enforcement of the order being reviewed until the case has been finally disposed of either in the supreme court or, where the cause has been remanded for a new hearing before a compensation judge or further proceedings before the workers' compensation court of appeals.

History: 1981 c 346 s 132

176.511 COSTS.

Subdivision 1. **Parties not awarded costs.** Except as provided otherwise by this chapter and specifically by this section, in appeals before the workers' compensation court of appeals or hearings before a compensation judge, costs shall not be awarded to either party.

[For text of subs 2 to 5, see M.S.1980]

History: 1981 c 346 s 133

176.521 SETTLEMENT OF CLAIMS.

Subdivision 1. **Validity.** An agreement between an employee or his dependent and the employer or insurer to settle any claim, which is not upon appeal before the workers' compensation court of appeals, for compensation under this chapter is valid where it has been executed in writing and signed by the parties, and intervenors in the matter, and the division or a compensation judge has approved the settlement and made an award thereon. If the matter is upon appeal before the workers' compensation court of appeals or district court, the workers' compensation court of appeals or district court is the approving body.

Subd. 2. **Approval.** Settlements shall be approved only where the terms conform with this chapter.

The division, a compensation judge, and the workers' compensation court of appeals shall exercise discretion in approving or disapproving a proposed settlement.

The parties to the agreement of settlement have the burden of proving that the settlement is reasonable, fair, and in conformity with this chapter. A settlement agreement where both the employee or his dependent and the employer or insurer and intervenors in the matter are represented by an attorney shall be presumed to be reasonable, fair, and in conformity with this chapter.

[For text of subd 3, see M.S.1980]

History: 1981 c 346 s 134,135

176.531 AWARD OF COMPENSATION AGAINST A POLITICAL SUBDIVISION OR SCHOOL DISTRICT.

[For text of subds 1 and 2, see M.S.1980]

Subd. 3. **Prompt payment.** It is the intent of this section that there be prompt payment of compensation.

History: 1981 c 346 s 136

176.645 ADJUSTMENT OF BENEFITS.

Subdivision 1. **Amount.** For injuries occurring after October 1, 1975 for which benefits are payable under section 176.101, subdivisions 1, 2 and 4, and section 176.111, subdivision 5, the total benefits due the employee or any dependents shall be adjusted in accordance with this section. On October 1, 1981, and thereafter on the anniversary of the date of the employee's injury the total benefits due shall be adjusted by multiplying the total benefits due prior to each adjustment by a fraction, the denominator of which is the statewide average weekly wage for December 31, of the year two years previous to the adjustment and the numerator of which is the statewide average weekly wage for December 31, of the year previous to the adjustment. For injuries occurring after October 1, 1975, all adjustments provided for in this section shall be included in computing any benefit due under this section. Any limitations of amounts due for daily or weekly compensation under this chapter shall not apply to adjustments made under this section. No adjustment increase made on October 1, 1977 or thereafter under this section shall exceed six percent a year. In those instances where the adjustment under the formula of this section would exceed this maximum the increase shall be deemed to be six percent.

Subd. 2. **Time of first adjustment.** For injuries occurring on or after October 1, 1981, the initial adjustment made pursuant to subdivision 1 shall be deferred until the first anniversary of the date of the injury.

History: 1981 c 346 s 137