

2012 Kansas Statutes

44-556. Judicial review of actions of the board; procedure; payment of compensation pending administrative and judicial review; application of 1993 amendments; reimbursement or credit for amounts paid under certain circumstances. (a) Any action of the board pursuant to the workers compensation act, other than the disposition of appeals of preliminary orders or awards under K.S.A. 44-534a, and amendments thereto, shall be subject to review in accordance with the Kansas judicial review act by appeal directly to the court of appeals. Any party may appeal from a final order of the board by filing an appeal with the court of appeals within 30 days of the date of the final order. When an appeal has been filed pursuant to this section, an appellee may file a cross appeal within 20 days after the date upon which the appellee was served with notice of the appeal. Such review shall be upon questions of law.

(b) Commencement of an action for review by the court of appeals shall not stay the payment of compensation due for the ten-week period next preceding the board's decision and for the period of time after the board's decision and prior to the decision of the court of appeals on review.

(c) If review is sought on any order entered under the workers compensation act prior to October 1, 1993, such review shall be in accordance with the provisions of K.S.A. 44-551 and this section, and any other applicable procedural provisions of the workers compensation act, as all such provisions existed prior to amendment by this act on July 1, 1993.

(d) (1) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer or the employer's insurance carrier during the pendency of review under this section and the amount of compensation awarded by the board is reduced or totally disallowed by the decision on the appeal or review, the employer and the employer's insurance carrier, except as otherwise provided in this section, shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a, and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of compensation that the worker is entitled to as determined by the final decision on review. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection (d)(1), and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

(2) If any temporary or permanent partial disability or temporary or permanent total disability benefits have been paid to the worker by the employer or the employer's insurance carrier during the pendency of review under this section and the amount of compensation awarded for such benefits by the board is reduced by the decision on the appeal or review and the balance of compensation due the worker exceeds the amount of such reduction, the employer and the employer's insurance carrier shall receive a credit which shall be applied as provided in this subsection (d)(2) for all amounts of such benefits which are in excess of the amount of such benefits that the worker is entitled to as determined by the final decision on review or appeal. If a lump-sum amount of compensation is due and owing as a result of the decision of the court of appeals, the credit under this subsection (d)(2) shall be applied first against such lump-sum amount. If there is no such lump-sum amount or if there is any remaining credit after a credit has been applied to a lump-sum amount due and owing, such credit shall be applied against the last compensation payments which are payable for a period of time after the final decision on review or appeal so that the worker continues to receive compensation payments after such final decision until no further compensation is payable after the credit has been satisfied. The credit allowed under this subsection (d)(2) shall not be applied so as to stop or reduce benefit payments after such final decision, but shall be used to reduce the period of time over which benefit payments are payable after such final decision. The provisions of this subsection (d)(2) shall be applicable in all cases under the workers compensation act in which a final award is issued by an administrative law judge on or after July 1, 1990.

(e) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer, the employer's insurance carrier or the workers compensation fund during the pendency of review under this section, and pursuant to K.S.A. 44-534a or K.S.A. 44-551, and amendments thereto, and the employer, the employer's insurance carrier or the workers compensation fund, which was held liable for and ordered to pay all or part of the amount of compensation awarded by the administrative law judge or board, is held not liable by the final decision on review by either the board or an appellate court for the compensation paid or is held liable on such appeal or review to pay an amount of compensation which is less than the amount paid pursuant to the award, then the employer, employer's insurance carrier or workers compensation fund shall be reimbursed by the party or parties which were held liable on such review to pay the amount of compensation to the worker that was erroneously ordered paid. The director shall determine the amount of compensation which is to be reimbursed to each party under this subsection, if any, in accordance with the final decision on the appeal or review and shall certify each such amount to be reimbursed to the party required to pay the amount or amounts of such reimbursement. Upon receipt of such certification, the party required to make the reimbursement shall pay the amount or amounts required to be paid in accordance with such certification. No worker shall be required to make reimbursement under this subsection or subsection (d).

(f) As used in subsections (d) and (e), "employers' insurance carrier" includes any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591, and amendments thereto, or a group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act.

(g) In any case in which any review is sought under this section and in which the compensability is not an issue to be decided on review, medical compensation shall be payable and shall not be stayed pending such review. The worker may proceed under K.S.A. 44-510k, and amendments thereto, and may have a hearing in accordance with that statute to enforce the provisions of this subsection.

History: L. 1927, ch. 232, § 42; L. 1929, ch. 206, § 1; L. 1955, ch. 250, § 10; L. 1961, ch. 243, § 5; L. 1967, ch. 281, § 1; L. 1970, ch. 190, § 9; L. 1974, ch. 203, § 42; L. 1976, ch. 145, § 197; L. 1977, ch. 109, § 29; L. 1979, ch. 158, § 1; L. 1982, ch. 213, § 4; L. 1986, ch. 318, § 57; L. 1987, ch. 187, § 14; L. 1989, ch. 149, § 5; L. 1990, ch. 183, § 9; Revived and amend., L. 1995, ch. 1, § 3; L. 1998, ch. 114, § 4; L. 2000, ch. 160, § 15; L. 2001, ch. 121, § 5; L. 2010, ch. 17, § 72; July 1.