

2018 Kansas Statutes

44-551. Assistant directors, administrative law judges and special local administrative law judges; application, qualifications, appointment, reappointment, term; workers compensation and employment security boards nominating committee; judges' powers and duties, compensation, fees and expenses; review of findings and awards by workers compensation appeals board; delayed order on board review, effect; payment of medical compensation pending review. (a) The duties of the assistant directors of workers compensation may include, but not be limited to, acting in the capacity of an administrative law judge.

(b) Each administrative law judge shall be an attorney regularly admitted to practice law in Kansas. Such attorney shall have at least five years of experience as an attorney, with at least one year of experience practicing law in the area of workers compensation.

(c) Except as provided in subsection (k), the annual salary of each administrative law judge shall be an amount equal to 85% of the annual salary paid by the state to a district judge, other than a district judge designated as a chief judge. Administrative law judges shall devote full time to the duties of such office and shall not engage in the private practice of law during their term of office. No administrative law judge may receive additional compensation for official services performed by the administrative law judge. Each administrative law judge shall be reimbursed for expenses incurred in the performance of such official duties under the same circumstances and to the same extent as district judges are reimbursed for such expenses.

(d) Applications for administrative law judge positions shall be submitted to the director of workers compensation. The director shall determine if an applicant meets the qualifications for an administrative law judge as prescribed in subsection (b). Qualified applicants for a position of administrative law judge shall be submitted by the director to the workers compensation and employment security boards nominating committee for consideration.

(e) There is hereby established the workers compensation and employment security boards nominating committee. Whenever the workers compensation administrative law judge nominating and review committee or the workers compensation board nominating committee, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the workers compensation and employment security boards nominating committee. The workers compensation and employment security boards nominating committee shall be composed of seven members who are appointed by the governor. Each of the following shall select one member to serve on the nominating committee by giving written notice of the selection to the governor who shall appoint such representatives to the committee:

- (1) The Kansas secretary of labor;
- (2) the Kansas chamber of commerce;
- (3) the national federation of independent business;
- (4) the Kansas AFL-CIO;
- (5) the Kansas state council of the society for human resource management (KS SHRM);
- (6) the Kansas self-insurers association; and
- (7) the secretary of labor, who shall select a nominee from either an employee organization as defined in K.S.A. 75-4322, and amendments thereto, or a professional employees' organization as defined in K.S.A. 72-2218, and amendments thereto.

In the event the governor refuses to appoint a member selected by one of the organizations in this subsection, the organization may replace that selection with another, subject to the same appointment requirements.

(f) Of the members first appointed to the workers compensation and employment security boards nominating committee, three shall be appointed for terms of two years and four shall be appointed for terms of four years as specified by the governor. Thereafter, members of the nominating committee shall be appointed for a term of four years. Members may not serve more than two consecutive terms.

(g) In the event of a vacancy on the nominating committee occurring for any reason, the respective member whose position becomes vacant shall be replaced by the selecting organization by submitting written notice of the replacement selection to the governor within 30 days of such vacancy. The governor shall either appoint or reject the replacement selection as provided in this section.

(h) The nominating committee shall meet as needed to provide the workers compensation and employment security board of review appointing authorities with nominees for appointments to the position of:

- (1) Workers compensation administrative law judge;
- (2) workers compensation appeals board member; and
- (3) employment security board of review.

No action of the committee shall be effective unless approved by two-thirds of the committee.

(i) When notified of a vacancy in the position of workers compensation administrative law judge or workers compensation appeals board member, the committee shall review all qualified applicants as submitted by the director of workers compensation. The committee shall nominate a qualified person to fill the vacancy and submit that nomination to the secretary of labor. The secretary shall either accept and appoint the person nominated by the nominating committee to the position for which the nomination was made or reject the nomination and request the nominating committee to nominate another person for that position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for that position in the same manner as set forth above.

(j) (1) Each administrative law judge shall hold office for a term of four years and may be reappointed. Each administrative law judge shall continue to serve for the term of the appointment or until a successor is appointed. An administrative law judge who wishes to be considered for reappointment shall be deemed to have met the qualification requirements for appointment as administrative law judge. If such administrative law judge wishes to be considered for reappointment by the nominating committee, such administrative law judge shall submit an application as provided in subsection (d) no sooner than 150 days before and no later than 90 days prior to the expiration of such judge's term. Within sixty days prior to the expiration of the term of the administrative law judge seeking reappointment, the nominating committee described above shall meet to vote on reappointment of the administrative law judge. The administrative law judge shall be submitted to the secretary for reappointment unless 2/3 of the nominating committee votes not to submit the administrative law judge for reappointment.

(2) If a vacancy should occur in the position of an administrative law judge during the term of an administrative law judge, the nominating committee shall nominate an individual from the qualified applicants submitted by the director to complete the remainder of the unexpired portion of the term.

(k) Except as otherwise provided in this subsection, administrative law judges appointed on and after July 1, 2006, shall serve a term of office of four years. Administrative law judges hired before July 1, 2006, may continue as administrative law judges under the classified service under the Kansas civil service act at the salary provided under the civil service act or may elect to be appointed to a term and receive the annual salary equal to 85% of the salary prescribed for a district judge if the currently employed administrative law judge within 60 days of the

effective date of this section notifies the director in writing that the administrative law judge elects to serve an appointed term of office rather than continuing in the classified service. The term of office for an administrative law judge who elects a term of office shall begin on the date the written election is received by the director and the first term of office for such person shall be for two, three or four years as specified by the secretary so that administrative law judges appointed under this subsection serve staggered terms. Thereafter, any such person if reappointed as an administrative law judge shall be appointed for a term of four years.

(l) (1) Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents and records to the same extent as is conferred on the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges. All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a, and amendments thereto, made by an administrative law judge shall be subject to review by the workers compensation appeals board upon written request of any interested party within 10 days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation. Review by the board shall be a prerequisite to judicial review as provided for in K.S.A. 44-556, and amendments thereto. On any such review, the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings. The orders of the board under this subsection shall be issued within 30 days from the date arguments were presented by the parties.

(2) (A) If an administrative law judge has entered a preliminary award under K.S.A. 44-534a, and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. Such an appeal from a preliminary award may be heard and decided by a single member of the board. Members of the board shall hear such preliminary appeals on a rotating basis and the individual board member who decides the appeal shall sign each such decision. The orders of the board under this subsection shall be issued within 30 days from the date arguments were presented by the parties.

(B) If an order on review is not issued by the board within the applicable time period prescribed by subsection (l)(1), medical compensation and any disability compensation as provided in the award of the administrative law judge shall be paid commencing with the first day after such time period and shall continue to be paid until the order of the board is issued, except that no payments shall be made under this provision for any period before the first day after such time period. Nothing in this section shall be construed to limit or restrict any other remedies available to any party to a claim under any other statute.

(C) In any case in which the final award of an administrative law judge is appealed to the board for review under this section and in which the compensability is not an issue to be decided on review by the board, medical compensation shall be payable in accordance with the award of the administrative law judge and shall not be stayed pending such review. The employee 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.

(m) Each assistant director and each administrative law judge or special administrative law judge shall be allowed all reasonable and necessary expenses actually incurred while in the actual discharge of official duties in administering the workers compensation act, but such expenses shall be sworn to by the person incurring the same and be approved by the secretary.

(n) In case of emergency the director may appoint special local administrative law judges and assign to them the examination and hearing of any designated case or cases. Such special local administrative law judges shall be attorneys and admitted to practice law in the state of Kansas and shall, as to all cases assigned to them, exercise the same powers as provided by this section for the regular administrative law judges. Special local administrative law judges shall receive a fee commensurate with the services rendered as fixed by rules and regulations adopted by the director. The fees prescribed by this section prior to the effective date of this act shall be effective until different fees are fixed by such rules and regulations.

(o) All special local administrative law judge's fees and expenses, with the exception of settlement hearings, shall be paid from the workers compensation administration fee fund, as provided in K.S.A. 74-712, and amendments thereto. Where there are no available funds or where the special local administrative law judge conducted a settlement hearing, the fees shall be taxed as costs in each case heard by such special local administrative law judge and when collected shall be paid directly to such special local administrative law judge by the party charged with the payment of the same.

(p) Except as provided for judicial review under K.S.A. 44-556, and amendments thereto, the decisions and awards of the board shall be final.

History: L. 1927, ch. 232, § 36; L. 1953, ch. 245, § 1; L. 1955, ch. 250, § 9; L. 1957, ch. 293, § 6; L. 1961, ch. 243, § 3; L. 1967, ch. 280, § 11; L. 1969, ch. 246, § 3; L. 1971, ch. 179, § 1; L. 1976, ch. 225, § 1; L. 1976, ch. 370, § 21; L. 1980, ch. 146, § 11; L. 1983, ch. 168, § 2; L. 1986, ch. 318, § 55; L. 1990, ch. 183, § 8; Revived and amend., L. 1995, ch. 1, § 2; L. 1996, ch. 79, § 12; L. 1997, ch. 125, § 12; L. 2001, ch. 121, § 4; L. 2006, ch. 109, § 1; L. 2013, ch. 104, § 1, Apr. 25.