

Memorandum in Support

TORTS, INSURANCE AND COMPENSATION LAW SECTION WORKERS' COMPENSATION LAW DIVISION

TICL Workers' Comp #1

February 19, 2020

S. 6087
A. 7435

By: Senator Ramos
By: M. of A. Jacobson

Senate Committee: Labor
Assembly Committee: Labor
Effective Date: Immediately

AN ACT to amend the Workers' Compensation Law (WCL), in relation to irregularities in a cover sheet accompanying an application for administrative review or for full board review or in a rebuttal to such applications.

LAW & SECTION REFERRED TO: Section 23-a of the workers' compensation law.

THE TORTS, INSURANCE AND COMPENSATION LAW SECTION WORKERS' COMPENSATION LAW DIVISION SUPPORTS THIS LEGISLATION

The New York State Bar Association Workers' Compensation Division of the Torts Insurance & Compensation Law Section¹ supports this bill, which would afford all parties before the New York State Workers' Compensation Board (Board) with a due process opportunity to have the merits of their important workers' compensation claims fully and fairly considered. This access to a decision on the merits is consistent with the New York State Bar Association's long-time goal of ensuring access to justice throughout New York State.

Since May of 2017 the Board has summarily denied and refused to consider the merits of more than 3,500² appeal requests, to the detriment of parties throughout New York State. We respectfully assert that without adoption of the proposed legislation, the arbitrary, technical denials which are currently the rule before the Workers' Compensation Board

¹ The Workers' Compensation Division is comprised of attorneys who are members of the New York State Bar Association and concentrate their practice and representation of parties before the Workers' Compensation Board. The group is made up of representatives from both sides of the workers' compensation system including individuals representing injured workers as well as individuals representing self-insured employers and workers' compensation insurance carriers.

² Data from reported decisions of the Workers' Compensation Board on LexisNexis since May 2017, search terms "Rule 300.13(b)", "denied" and "remains in effect".

will continue to deprive parties from obtaining a decision on the merits preventing these parties from important determinations of precedential issues before the Workers' Compensation Board. The current bill would prevent applications for administrative review, full board review or rebuttals to such applications submitted by the parties to the Board from being denied for review based upon mistakes, omissions, defects and/or other minor irregularities contained in the required forms/cover sheets submitted by the parties. The Board would be required to provide written notice of such deficiencies and afford the parties a period of short duration to correct and remedy the deficiencies so that the substantive merits of the applications and rebuttals can be fully considered.

We strongly support maintaining the rights and benefits of the parties to obtain a due process review of the proceedings in order to ensure continued access to justice for all in New York State. The pattern of denying review for minor irregularities has deprived thousands of parties from their basic rights in the workers' compensation system. The failure to provide a full and complete review on the merits is a denial of justice and is inconsistent with the rights of all parties to have access to justice and fair resolution of their claims.

We join with numerous other groups and parties throughout the State asking that the Legislature ensure access to justice for its citizens. The proposed legislation would minimize the loss of basic rights before the Workers' Compensation Board and prevent harsh results due to arbitrary and unreasonably strict enforcement of Board rules and regulations.

On behalf of our members throughout New York State representing both injured workers as well as self-insured employers and insurance carriers, it is respectfully asserted that life-altering decisions affecting the parties and the significant benefits adjudicated by the workers' compensation system should not be denied based upon procedural technicalities.

For the foregoing reasons, NYSBA's Torts, Insurance and Compensation Law Section Workers' Compensation Law Division **SUPPORTS** this legislation.