

781—10.1(85) Benefits of second injury fund. If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of, or loss of use of, another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no preexisting disability. In addition to this compensation, and after the expiration of the full period provided by law for payments by the employer, the employee shall be paid out of the second injury fund the remainder of compensation payable for the degree of permanent disability involved after first deducting the compensable value of the previously lost member or organ. Any benefits received by the employee, or to which the employee may be entitled, by reason of increased disability from any state or federal fund or agency, to which the employee has not directly contributed, shall be regarded as a credit to any award made against the second injury fund.

10.1(1) Informal claims. Employees with second injuries as covered in Iowa Code sections 85.63 to 85.69 and rule 10.1(85) may file claims for informal settlements of controversies arising in connection with the second injury fund. An informal claim may be filed under these rules if the claimant has not previously filed a contested case with the industrial commissioner under Iowa Code section 86.14 and 343—4.1(1) and 4.1(2). An informal settlement of a pending contested case is governed by 343—6.1(85,86).

10.1(2) Tolling of claim. A claimant's filing of an informal claim under these rules shall not toll the applicable statute of limitations and filing for informal settlement is not a prerequisite to filing a contested case proceeding for second injury fund benefits with the industrial commissioner under Iowa Code section 86.13.

10.1(3) Filing an informal claim. The claimant shall initiate the procedure if an informal settlement is desired by filing a notarized claim for an informal determination with the treasurer within two years from the date of the occurrence of the injury for which benefits are claimed. The claim shall be filed on the second injury fund claim form which is available at the Office of the Treasurer, Capitol Building, Des Moines, Iowa 50319. This form must be complete and contain all exhibits as specified in subrule 10.1(4). The treasurer may require additional documentation. If the treasurer requests additional documentation, it must be provided within 60 days of the treasurer's request. The treasurer shall issue a written decision to the claimant within 90 days after the day that all necessary claim documentation is received by the treasurer.

If a claimant is not satisfied with the decision of the treasurer on an informal claim, the claimant may then file a contested case proceeding as per Iowa Code section 86.14, if the statute of limitations has not tolled for the filing under Iowa Code section 85.26.

10.1(4) Required claim documentation. Documents required to be filed with the second injury fund claim form shall include:

- a. All medical records and reports concerning the first injury;
- b. All medical records and reports concerning the second injury;
- c. All records reflecting any payment of social security benefits for the first or second injury;
- d. All employer's records concerning the second injury including, but not limited to, documents reflecting workers' compensation payments and weekly rates of compensation following the second injury;
- e. All records of workers' compensation insurance carriers which covered the second injury; and
- f. All employer's records concerning claimant's employment following the second injury.

10.1(5) Rescission of informal claim. A claimant may at any time rescind the informal claim and file a contested case proceeding as per Iowa Code section 86.14. Filing a contested case will automatically terminate consideration of an informal claim filing.

10.1(6) Payment on claim by treasurer. If the treasurer determines that the claim should be paid, the treasurer shall submit recommendation to the industrial commissioner for authorization and for a written order in accordance with Iowa Code section 85.67. This recommendation shall indicate the amount of the weekly compensation to be paid, number of weeks to be paid, the date when payment shall begin, and the length of time payments shall be paid.

This rule is intended to implement Iowa Code section 17A.10.