

House File 518 - Enrolled

House File 518

AN ACT

RELATING TO WORKERS' COMPENSATION AND INCLUDING APPLICABILITY
PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 85.16, subsection 2, Code 2017, is amended to read as follows:

2. a. By the employee's intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, if the intoxication was a substantial factor in causing the injury.

b. For the purpose of disallowing compensation under this subsection, both of the following apply:

(1) If the employer shows that, at the time of the injury or immediately following the injury, the employee had positive test results reflecting the presence of alcohol, or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug which drug either was not prescribed by an authorized medical practitioner or was not used in accordance with the prescribed use of the drug, it shall be presumed that the employee was intoxicated at the time of the injury and that intoxication was a substantial factor in causing the injury.

(2) Once the employer has made a showing as provided in subparagraph (1), the burden of proof shall be on the employee to overcome the presumption by establishing that the employee was not intoxicated at the time of the injury, or that intoxication was not a substantial factor in causing the injury.

Sec. 2. Section 85.18, Code 2017, is amended to read as follows:

85.18 Contract to relieve not operative.

No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by [this chapter](#) except as herein provided. This section does not create a private cause of action.

Sec. 3. Section 85.23, Code 2017, is amended to read as follows:

85.23 Notice of injury — failure to give.

Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed. For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

Sec. 4. Section 85.26, subsection 1, Code 2017, is amended to read as follows:

1. An original proceeding for benefits under [this chapter](#) or [chapter 85A](#), [85B](#), or [86](#), shall not be maintained in any

contested case unless the proceeding is commenced within two years from the date of the occurrence of the injury for which benefits are claimed or, if weekly compensation benefits are paid under [section 86.13](#), within three years from the date of the last payment of weekly compensation benefits. For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

Sec. 5. Section 85.33, subsection 3, Code 2017, is amended to read as follows:

3. a. If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work with the same offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. Work offered at the employer's principal place of business or established place of operation where the employee has previously worked is presumed to be geographically suitable for an employee whose duties involve travel away from the employer's principal place of business or established place of operation more than fifty percent of the time. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.

b. The employer shall communicate an offer of temporary work to the employee in writing, including details of lodging, meals, and transportation, and shall communicate to the employee that if the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing and that during the period of the refusal the employee will not be compensated with temporary partial, temporary total, or healing period benefits, unless the work refused is not suitable. If the employee

refuses the offer of temporary work on the grounds that the work is not suitable, the employee shall communicate the refusal, along with the reason for the refusal, to the employer in writing at the time the offer of work is refused. Failure to communicate the reason for the refusal in this manner precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

Sec. 6. Section 85.34, subsection 2, unnumbered paragraph 1, Code 2017, is amended to read as follows:

Compensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1 when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined by use of the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. The compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. The compensation shall be based upon the extent of the disability and upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to one hundred eighty-four percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. For all cases of permanent partial disability compensation shall be paid as follows:

Sec. 7. Section 85.34, subsection 2, Code 2017, is amended by adding the following new paragraph:

NEW PARAGRAPH. *On.* For the loss of a shoulder, weekly compensation during four hundred weeks.

Sec. 8. Section 85.34, subsection 2, paragraph u, Code 2017, is amended to read as follows:

u. In all cases of permanent partial disability other than

those hereinabove described or referred to in paragraphs "a" through "t" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

Sec. 9. Section 85.34, subsection 2, Code 2017, is amended by adding the following new paragraphs:

NEW PARAGRAPH. w. In all cases of permanent partial disability described in paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in

determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity.

NEW PARAGRAPH. x. Compensation for permanent partial disability for an injury shall terminate on the date when compensation for permanent total disability for any injury begins. An employee shall not receive compensation for permanent partial disability if the employee is receiving compensation for permanent total disability.

Sec. 10. Section 85.34, subsection 3, Code 2017, is amended to read as follows:

3. *Permanent total disability.*

a. Compensation for an injury causing permanent total disability shall be upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to two hundred percent of the statewide average weekly wage paid employees as determined by the department of workforce development under [section 96.19, subsection 36](#), and in effect at the time of the injury. The minimum weekly benefit amount is equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. The weekly compensation is payable ~~during the period of the employee's disability~~ until the employee is no longer permanently and totally disabled.

b. Such compensation shall be in addition to the benefits provided in [sections 85.27 and 85.28](#). No compensation shall be payable under [this subsection](#) for any injury for which compensation is payable under [subsection 2 of this section](#). In the event compensation has been paid to any person under any provision of [this chapter, chapter 85A or chapter 85B](#) for ~~the same~~ an injury producing a total permanent disability, any such amounts so paid shall be deducted from the total amount of compensation payable for ~~such~~ permanent total disability. An employee shall not receive compensation for permanent partial disability if the employee is receiving compensation for permanent total disability.

Sec. 11. Section 85.34, subsection 3, Code 2017, is amended by adding the following new paragraphs:

NEW PARAGRAPH. *c.* An employee forfeits the employee's weekly compensation for a permanent total disability under this subsection for a week in which the employee is receiving a payment equal to or greater than fifty percent of the statewide average weekly wage from any of the following sources:

- (1) Gross earnings from any employer.
- (2) Payment for current services from any source.

NEW PARAGRAPH. *d.* An employee is not entitled to compensation for a permanent total disability under this subsection while the employee is receiving unemployment compensation under chapter 96.

Sec. 12. Section 85.34, subsections 4 and 5, Code 2017, are amended to read as follows:

4. *Credits for excess payments.* If an employee is paid weekly compensation benefits for temporary total disability under [section 85.33, subsection 1](#), for a healing period under [section 85.34, subsection 1](#), or for temporary partial disability under [section 85.33, subsection 2](#), in excess of that required by [this chapter](#) and [chapters 85A, 85B, and 86](#), the excess paid by the employer shall be credited against the liability of the employer for ~~permanent partial disability under [section 85.34, subsection 2](#)~~ any future weekly benefits due for an injury to that employee, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

5. *Recovery of employee overpayment.* If an employee is paid any weekly benefits in excess of that required by [this chapter](#) and [chapters 85A, 85B, and 86](#), the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to [subsection 2](#), for a any current or subsequent injury to the same employee. ~~An overpayment can be established only when the overpayment is recognized in a settlement agreement approved under [section 86.13](#), pursuant to final agency action in a contested case which was commenced within three years from the date that weekly benefits were last paid for the claim for which the benefits were overpaid, or pursuant to final agency action~~

~~in a contested case for a prior injury to the same employee. The credit shall remain available for eight years after the date the overpayment was established. If an overpayment is established pursuant to [this subsection](#), the employee and employer may enter into a written settlement agreement providing for the repayment by the employee of the overpayment. The agreement is subject to the approval of the workers' compensation commissioner. The employer shall not take any adverse action against the employee for failing to agree to such a written settlement agreement.~~

Sec. 13. Section 85.34, subsection 7, paragraph a, Code 2017, is amended to read as follows:

~~a.~~ An employer is fully liable for compensating all only that portion of an employee's disability that arises out of and in the course of the employee's employment with the employer and that relates to the injury that serves as the basis for the employee's claim for compensation under this chapter, or chapter 85A, 85B, or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment from a prior injury with the employer, to the extent that the employee's preexisting disability has already been compensated under this chapter, or chapter 85A, 85B, or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

Sec. 14. Section 85.34, subsection 7, paragraphs b and c, Code 2017, are amended by striking the paragraphs.

Sec. 15. Section 85.39, Code 2017, is amended to read as follows:

85.39 Examination of injured employees.

1. After an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, the employee, at the employee's own cost, is entitled to have a physician or physicians of the employee's own selection present to participate in

the examination. If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, the employee shall be compensated at the employee's regular rate for the time the employee is required to leave work, and the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation. The refusal of the employee to submit to the examination shall ~~suspend~~ forfeit the employee's right to any compensation for the period of the refusal. Compensation shall not be payable for the period of ~~suspension~~ refusal.

2. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. The physician chosen by the employee has the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination. An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection, shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Sec. 16. Section 85.45, subsection 1, unnumbered paragraph 1, Code 2017, is amended to read as follows:

Future payments of compensation may be commuted to a present worth lump sum payment only upon application of a party to the commissioner and upon written consent of all parties to the proposed commutation or partial commutation, and on the

following conditions:

Sec. 17. Section 85.45, Code 2017, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The parties to any commutation or partial commutation of future payments agreed to and ordered pursuant to this section may agree that the employee has the right to benefits pursuant to section 85.27 under such terms and conditions as agreed to by the parties, for a specified period of time after the commutation or partial commutation agreement has been ordered by the workers' compensation commissioner. During that specified period of time, the commissioner shall have jurisdiction of the commutation or partial commutation agreement for the purpose of adjudicating the employee's entitlement to benefits provided for in section 85.27 as provided in the agreement.

Sec. 18. Section 85.70, Code 2017, is amended to read as follows:

85.70 Additional payment for attendance — rehabilitation and training — new career vocational training and education program.

1. An employee who has sustained an injury resulting in permanent partial or permanent total disability, for which compensation is payable under this chapter other than an injury to the shoulder compensable pursuant to section 85.34, subsection 2, paragraph "On", and who cannot return to gainful employment because of such disability, shall upon application to and approval by the workers' compensation commissioner be entitled to a one hundred dollar weekly payment from the employer in addition to any other benefit payments, during each full week in which the employee is actively participating in a vocational rehabilitation program recognized by the vocational rehabilitation services division of the department of education. The workers' compensation commissioner's approval of such application for payment may be given only after a careful evaluation of available facts, and after consultation with the employer or the employer's representative.

Judicial review of the decision of the workers' compensation commissioner may be obtained in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, and in section 86.26. Such additional benefit payment shall be paid

for a period not to exceed thirteen consecutive weeks except that the workers' compensation commissioner may extend the period of payment not to exceed an additional thirteen weeks if the circumstances indicate that a continuation of training will in fact accomplish rehabilitation.

2. a. An employee who has sustained an injury to the shoulder resulting in permanent partial disability for which compensation is payable under section 85.34, subsection 2, paragraph "On", and who cannot return to gainful employment because of such disability, shall be evaluated by the department of workforce development regarding career opportunities in specific fields aligning with postsecondary career and technical education programs that provide instruction in the areas of agriculture, family and consumer sciences, health occupations, business, industrial technology, and marketing, that allow for accommodation of the employee's disability and to determine if the employee would benefit from participation in the new career vocational training and education program offered through an area community college, that will allow the employee to return to the workforce.

b. Upon completion of the evaluation and a determination by the department that the employee is a candidate for the new career vocational training and education program, the employee shall be referred by the department to the community college that is in the closest proximity to the employee's residence, or upon agreement of the department and the employee, to the community college that offers a vocational training and education program that best meets the employee's needs, for enrollment in the new career vocational training and education program at the community college for the purpose of providing the employee with occupational training that will result in, at a minimum, the awarding of an associate degree or completion of a certificate program and will enable the employee to return to the workforce. If an employee does not enroll in the new career vocational training and education program at the community college to which the employee has been referred by the department within six months after the referral, the employee is no longer eligible to participate in the program.

c. The employee shall be entitled to financial support from

the employer or the employer's insurer for participation in the new career vocational and education training program in a total amount not to exceed fifteen thousand dollars to be used for the payment of tuition and fees and the purchase of required supplies. The community college in which an employee is enrolled pursuant to the program shall bill the employer or the employer's insurer for the employee's tuition and fees each semester, or the equivalent, that the employee is enrolled in the program. The employer or the employer's insurer shall also pay for the purchase of supplies required by the employee to participate in the program, upon receipt of documentation from the employee detailing the cost of the supplies and the necessity for purchasing the supplies. Such documentation may include written course requirements or other documentation from the community college or the course instructor regarding the necessity for the purchase of certain supplies.

d. The employer or the employer's insurer may request a periodic status report each semester from the community college documenting the employee's attendance and participation in and completion of the education and training program. If an employee does not meet the attendance requirements of the community college at which the employee is enrolled or does not maintain a passing grade in each course in which the employee is enrolled each semester, or the equivalent, the employee's eligibility for continued participation in the program is terminated.

e. The community college shall also provide the employer or the employer's insurer with documentation detailing that the receipt of funds by the community college pursuant to this subsection is for the payment of tuition and fees and the purchase of required supplies.

f. Beginning on or before December 1, 2018, the department of workforce development, in cooperation with the department of education, the insurance division of the department of commerce, and all community colleges that are participating in the new career and vocational training and education program, shall prepare an annual report for submission to the general assembly that provides information about the status of the program including but not limited to the utilization

of and participants in the program, program completion rates, employment rates after completion of the program and the types of employment obtained by the program participants, and the effects of the program on workers' compensation premium rates.

Sec. 19. Section 85.71, subsection 1, paragraph a, Code 2017, is amended to read as follows:

a. The employer has a place of business in this state and the employee regularly works at or from that place of business, ~~or the employer has a place of business in this state and the employee is domiciled in this state.~~

Sec. 20. Section 86.26, Code 2017, is amended to read as follows:

86.26 Judicial review.

1. Judicial review of decisions or orders of the workers' compensation commissioner may be sought in accordance with [chapter 17A](#). Notwithstanding [chapter 17A](#), the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the hearing under [section 86.17](#) was held, the workers' compensation commissioner shall transmit to the reviewing court the original or a certified copy of the entire record of the contested case which is the subject of the petition within thirty days after receiving written notice from the party filing the petition that a petition for judicial review has been filed, and an application for stay of agency action during the pendency of judicial review shall not be filed in the division of workers' compensation of the department of workforce development but shall be filed with the district court. Such a review proceeding shall be accorded priority over other matters pending before the district court.

2. Notwithstanding [section 17A.19](#), subsection 5, a timely petition for judicial review filed pursuant to this section shall stay execution or enforcement of a decision or order of the workers' compensation commissioner if the party seeking judicial review posts a bond securing any compensation awarded pursuant to the decision or order with the district court within thirty days of filing the petition, in a reasonable amount as fixed and approved by the court. Unless either the party posting the bond files an objection with the court,

within twenty days from the date that the bond is fixed and approved by the court, that the amount of the bond is not reasonable, or the party whose interests are protected by the bond files an objection with the court, within twenty days from the date that the amount of the bond is fixed and approved by the court, that the amount of the bond is not reasonable or adequate, the amount of the bond shall be deemed reasonable and adequate. If, upon objection, the district court orders the amount of the bond posted to be modified, the party seeking judicial review shall repost the bond in the amount ordered, within twenty days of the date of the order modifying the bond, in order to continue the stay of execution or enforcement of the decision or order of the workers' compensation commissioner.

Sec. 21. Section 86.39, Code 2017, is amended to read as follows:

86.39 Fees — approval.

1. All fees or claims for legal, medical, hospital, and burial services rendered under this chapter and chapters 85, 85A, 85B, and 87 are subject to the approval of the workers' compensation commissioner. For services rendered in the district court and appellate courts, the attorney fee is subject to the approval of a judge of the district court.

2. An attorney shall not recover fees for legal services based on the amount of compensation voluntarily paid or agreed to be paid to an employee for temporary or permanent disability under this chapter, or chapter 85, 85A, 85B, or 87. An attorney shall only recover a fee based on the amount of compensation that the attorney demonstrates would not have been paid to the employee but for the efforts of the attorney. Any disputes over the recovery of attorney fees under this subsection shall be resolved by the workers' compensation commissioner.

Sec. 22. Section 86.42, Code 2017, is amended to read as follows:

86.42 Judgment by district court on award.

Any party in interest may present a file-stamped copy of an order or decision of the commissioner, from which a timely petition for judicial review has not been filed or if

judicial review has been filed, which has not had execution or enforcement stayed as provided in section 17A.19, subsection 5, or section 86.26, subsection 2, or an order or decision of a deputy commissioner from which a timely appeal has not been taken within the agency and which has become final by the passage of time as provided by rule and [section 17A.15](#), or an agreement for settlement approved by the commissioner, and all papers in connection therewith, to the district court where judicial review of the agency action may be commenced. The court shall render a decree or judgment and cause the clerk to notify the parties. The decree or judgment, in the absence of a petition for judicial review or if judicial review has been commenced, in the absence of a stay of execution or enforcement of the decision or order of the workers' compensation commissioner as provided in section 17A.19, subsection 5, or section 86.26, subsection 2, or in the absence of an act of any party which prevents a decision of a deputy workers' compensation commissioner from becoming final, has the same effect and in all proceedings in relation thereto is the same as though rendered in a suit duly heard and determined by the court.

Sec. 23. Section 535.3, subsection 1, Code 2017, is amended to read as follows:

1. a. Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to [section 668.13](#), ~~except for interest due pursuant to section 85.30 for which the rate shall be ten percent per year.~~

b. Notwithstanding paragraph "a", interest due pursuant to section 85.30 shall accrue from the date each compensation payment is due at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Sec. 24. APPLICABILITY.

1. The sections of this Act amending sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of this Act.

2. The sections of this Act amending section 85.45 apply to

commutations for which applications are filed on or after the effective date of this Act.

LINDA UPMEYER
Speaker of the House

JACK WHITVER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 518, Eighty-seventh General Assembly.

CARMINE BOAL
Chief Clerk of the House

Approved _____, 2017

TERRY E. BRANSTAD
Governor