



## STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY  
WORKERS' COMPENSATION DIVISION  
SAINT PAUL, MINN. 55101

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### STATEMENT OF NEED AND REASONABLENESS FOR RULES FOR REIMBURSEMENT OF SUPPLEMENTARY BENEFITS

The Minnesota Supreme Court's decision in McClish v. Pan-O-Gold Baking Co., et al, 336 N.W. 2d 538 (Minn. 1983) compels the workers' compensation division of the department of labor and industry to alter its procedures for the reimbursement of supplementary benefits paid for total disability. The payment of \$25,000 of total disability benefits entitles the employer to reduce subsequent weekly total disability payments by the amount of any governmental disability benefits the employee receives. Minn. Stat. § 176.101, subd. 4. Any reduction in workers' compensation total disability benefits due to the offset is replaced by the payment of supplementary benefits, for which the employer is reimbursed by the special compensation fund. Minn. Stat. § 176.132, subd. 3.

Before the McClish decision, it was unnecessary to distinguish benefits paid for temporary total disability from those paid for permanent total disability. In Souden v. Hopkins Motor Sales, Inc., 289 Minn. 138, 182 N.W. 2d 668 (1971), the supreme court concluded that payments for temporary total disability could be applied toward the \$25,000 offset threshold of Minn. Stat. § 176.101, subd. 4. As a result, the distinction between temporary total disability and permanent total disability had little practical effect on the reimbursement of supplementary benefits.

Under the McClish decision, however, a "finding" of permanent total disability must be made before the offset provision of Minn. Stat. § 176.101, subd. 4 can be activated. After an employee's total disability is found to be permanent, all total disability benefits, including those paid for temporary total disability, are includible toward the \$25,000 offset threshold. The finding of permanent total disability thus triggers the payment and subsequent reimbursement of supplementary benefits by the special compensation fund.

These rules prescribe the procedure for applying for an administrative finding of permanent total disability. The special compensation fund reimburses approximately 2000 requests for supplementary benefits annually. Most of the cases involve permanent total disability, despite the absence of a formal determination of permanency. Invariably requiring a judicial finding of permanent total disability by the commissioner would impose considerable economic and administrative costs on employers without conferring any discernible benefit on employees. Instead, these rules are intended to minimize the administrative burdens on employers who seek reimbursement of supplementary benefits, while ensuring the uninterrupted flow of the benefits to which employees are entitled by law.

8 MCAR § 1.9001 Definitions. The effective date of the finding is defined as the time from which the employer included or will include the offset in the calculation of the employee's total disability benefits. The definition of government disability benefits includes old age and survivor insurance benefits as specified in Minn. Stat. § 176.101. This provision also encompasses disability benefits paid by the federal social security administration. See Gauthier v. McCourtney Plastics, Inc., 34 W.C.D. 8 (1981). Benefits paid by police relief associations are also included. See Kramer v. City of St. Paul, 33 W.C.D. 425 (1981).

The definition of total disability benefits comports with the statutory application of the offset to "weekly compensation." Minn. Stat. § 176.101, subd. 4. The method of payment of workers' compensation benefits to the employee is dispositive of their characterization as "weekly compensation." Benefits that are "paid or payable weekly" thus constitute weekly compensation. See Gauthier v. McCourtney Plastics, Inc., 34 W.C.D. 8 (1981). The method of payment is fixed at the onset of the disbursement of economic recovery and impairment benefits in order to facilitate their classification, while furthering the statute's purpose of encouraging the employment of impaired persons. Impairment compensation is sometimes substituted for economic recovery compensation. Laws of Minnesota 1983, Chapter 290, section 48. Because the legislature intended the benefits to be interchangeable in those cases, the method of payment is also assumed to be interchangeable. Consequently, impairment compensation, like economic recovery compensation, is deemed to be paid or payable weekly.

8 MCAR § 1.9002 Authority and Purpose. The commissioner's authority to promulgate these rules appears in the directive to prescribe procedures for the administration of supplementary benefits at Minn. Stat. § 176.132, subd. 4; in the plenary rulemaking authority of Minnesota Laws of 1983, chapter 290, section 165; and in the workers' compensation rulemaking authority of Minn. Stat. § 175.17 (2).

8 MCAR § 1.9003 Application. This rule delimits the scope of cases for which a finding of permanent total disability is available. In fashioning the parameters of the rules, two objectives were paramount. First, the rules are intended to make an administrative finding available only where it is warranted in the particular case. The offset provision of Minn. Stat. § 176.101, subd. 4, is activated when the conditions of Sections A, B, C, and H are satisfied. Accordingly, administrative consideration is limited to those applicants who meet the statutory preconditions for the offset so that findings are not rendered prematurely. In Section H, no attempt is made to define "permanent", as permanency is presently subject to case law development. See, e.g., Fredenburg v. Control Data Corp., 311 N.W. 2d 860 (Minn. 1981), and cases cited therein. A precise definition is unnecessary because cases in which permanency may be contested are expressly excluded from their scope.

The second purpose underlying the rules is to preclude administrative screening of applications if the determination of permanency is more appropriately made at the judicial than at the administrative level. A judicial determination is preferable where any prior judicial ruling concerning an employee's permanent total disability would supersede an administrative finding. Since an administrative finding in this instance would thus be superfluous, it is prohibited by Sections D and E.

A full judicial hearing is also desirable when the question of an employee's permanent total disability may be disputed. The provision in Section A relating to benefit interruptions requires judicial consideration where a protracted benefit interruption may precipitate a challenge to a finding of permanent total disability. In addition, a judicial determination is essential where a finding of permanency would result in diminished benefits and a subsequent challenge by the employee. Section F thus requires a judicial finding in these cases. Section G excludes from administrative consideration cases in which an employer or insurer seeks to recapture excessive payments to employees through the remedy provided by Minn. Stat. § 176.179. The reimbursement of overpayments to the employer or insurer may cause a decrease in benefits to the employee. This potential decrease entitles the employee to judicial consideration of the application for a finding.

Immediately channeling the cases described in sections A and D-G toward the judicial system will provide the opportunity for a full hearing in the few instances where permanency may be contested. With most cases resolved through routine administrative procedures, however, the burden which these rules place on the judicial branch of the workers' compensation system is expected to be minimal.

8 MCAR § 1.9004 Procedure. The procedural requirements for submitting the application to the commissioner are intended to expedite the administrative handling of applications. Sections B.1 - B.5 identify the department's file on the employee.

Under B.6, the administrative finding governs the payment of benefits from the time that the employer applied the offset provision in Minn. Stat. § 176.101, subd. 4. This ensures that employers and insurers are fully reimbursed, as required by Minn. Stat. § 176.132, subd. 3, for their payments of supplementary benefits to an employee who is found to be permanently totally disabled.

The date of eligibility for government disability benefits at paragraph B.7 is the date on which another administrative agency (usually the social security administration) finds the employee to be permanently totally disabled. This information is necessary to enable the commissioner to compute the proper supplementary benefit reimbursement rate. The name of the medical provider is required at paragraph B.8 so that the commissioner may identify the medical reports containing the necessary evidence of the employee's permanency. At paragraph B.9, the status of the rehabilitation plan indicates whether efforts are being made to return the employee to the job market. This is relevant because employability is integral to a determination of permanency.

Under Section C, the employer is permitted to apply for a finding shortly before its effective date in order to preserve an uninterrupted stream of benefits to the employee while the application is screened.

Sections D and E require the filing of only those reports which have not been previously filed with the department. The attachment of reports is not routinely required because they should already be in the employee's file at the department.

The benefits analysis required by section F illustrates for the employee the expected effect of a finding of permanent total disability on the amount of weekly benefits. This analysis permits the employee to verify that benefits will not be reduced by a finding of permanent total disability, and to challenge a finding which does reduce benefits. Where a finding of permanent total disability may jeopardize

employee benefits, the finding of permanency should be judicial and not administrative. The inclusion of a benefits analysis thus defuses due process challenges to the finding.

In Section G, the party filing the application must be identified to facilitate the handling of the file. Section H requires the mailing of the application to the employee and to the employee's attorney. This notifies the employee of the proposed change and permits the employee to challenge it if desired.

8 MCAR § 1.9005 Notice of decision. The 30-day waiting period is intended to give the commissioner an opportunity to review the file and the employee an opportunity to object. The ultimate result of acceptance by the commissioner will be a reimbursement check to the employer or insurer for those supplementary benefits which replaced the total disability benefits that were reduced by the offset. Because the transaction is routine, no other notice from the commissioner is warranted. This simplified notice mechanism also reduces the administrative burdens on all parties.

8 MCAR § 1.9006 Disapproval by commissioner. The grounds for disapproval specified in this rule are designed to expedite the handling of routine cases while preserving close scrutiny for controversial cases. Section A requires disapproval for errors or omissions in information or noncompliance with the requirements of the rules. Medical reports, and other documents which are necessary to justify a finding of permanent total disability, will be rejected if they are incomplete or inaccurate. However, since these deficiencies do not warrant judicial scrutiny of applications, employers or insurers may resubmit applications for administrative processing after the errors or omissions are rectified.

Rehabilitation is a basis for disapproval in section B for two reasons. First, employability, which is generally evaluated by rehabilitation specialists, is a significant factor in determinations of permanency. See, e.g., Scott v. Southview Chevrolet Co., 267 N.W. 2d 185 (Minn. 1978). Second, rehabilitation is required for all injuries occurring after October 1, 1979, the effective date of Minn. Stat. § 176.102. (1980). Employers who have not provided rehabilitation for these injuries are thus in violation of the law.

Section C provides the necessary counterbalance to the self-interested judgment of the employer or insurer made at 8 MCAR § 1.9003 H. This will permit the channeling of contestable claims to formal dispute resolution procedures.

8 MCAR § 1.9007 Effect of finding. This rule is necessary to protect the due process rights of the parties. It recognizes that any party has recourse to a full hearing with the production of all relevant evidence even after an administrative finding is made. However, a party does not compromise its position in a possible later hearing by first pursuing an administrative finding. Consequently, a party will likely proceed administratively in most instances.

8 MCAR § 1.9008 Revision of finding. Under the Souden and McClish decisions, a finding of permanency results in the recharacterization of temporary total disability benefits as permanent total disability benefits. A judicial finding may be subsequently overturned or vacated where, for example, the employee's medical condition unexpectedly changes or opportunities in the labor market increase. See Petter v.

K. W. McKee, Inc., 270 Minn. 302, 133 N.W. 2d 638 (1965). Similarly, an administrative finding should be subject to revision if it is no longer justified. To prevent the reconsideration by the commissioner of his own administrative findings, however, revisions must be made judicially.

8 MCAR § 1.9009 Severability. This section preserves the legal viability of the remaining rules in the event that a portion of the rules is found to lack legal force and effect.

8 MCAR § 1.9010 Effective date. This section activates these rules in the manner required by Minn. Stat. § 14.27.