

**STATE OF MINNESOTA  
Department of Labor and Industry  
Workers' Compensation Division  
443 Lafayette Road  
St. Paul, Minnesota 55155-4319**

In the Matter of the Proposed  
Amendment of Rules of the Minnesota  
Department of Labor and Industry,  
Workers' Compensation Division,  
Governing Findings of Permanent Total  
Disability and Reimbursement of  
Supplementary Benefits

**STATEMENT OF NEED  
AND REASONABLENESS**

The proposed rules concern determinations, following work-related injuries of whether an employee is permanently and totally disabled from employment. It provides an informal administrative procedure for obtaining a finding of permanent total disability (PTD) based upon an agreement between the employer/insurer and the employee subject to approval by the Commissioner. The proposed rule amends the existing rules which currently provide for an administrative finding of PTD under limited conditions and do not require agreement between the employer/insurer and employee.

An official determination or finding that an employee is permanently and totally disabled is especially important to employers and insurers for a number of reasons. First, The Minnesota Supreme Court decision in McClish v. Pan-O-Gold Banking Co., et al, 336 N.W.2d 538 (Minn. 1983) requires a finding of PTD before an employer or insurer may apply the offset provision in M. S. § 176.101, subd 4. The offset allows a reduction of workers' compensation benefits after receipt of \$25,000 in PTD benefits when the employee is receiving government disability or retirement benefits. Second, Christensen v. Whirlpool, 41 W.C.D. 1047 (1989), requires that only benefits determined to be PTD benefits be counted in the calculation of the \$25,000 necessary to be paid before the offset may be taken. Third, the Social Security Administration will not recognize the workers' compensation offset until there has been an official finding of PTD by the Commissioner or a compensation judge.

In a typical case an employee receiving Temporary Total Disability benefits (TTD) and Social Security Disability Income benefits (SSDI) will have SSDI reduced because of the TTD being received. After an official finding of PTD, and after \$25,000 in PTD benefits are paid, M. S. § 176.101, subd. 4 allows PTD benefits to be offset based on SSDI being paid. At the same time, federal law provides that when the PTD offset beings, the SSDI offset will end. Additionally, as a result of the reduction in PTD benefits due to the offset, the employee may be entitled to supplementary benefits under M. S. § 176.132. Supplementary benefits are paid by the employer or insurer and reimbursed by the Special Compensation Fund (SCF).

The proposed rule provides a quick and informal process to obtain a finding of PTD where there is agreement between the employer/insurer and the employee, and approval of the agreement by the Commissioner. It gives employers and insurers a less burdensome method of obtaining a PTD determination and obtaining reimbursement for supplementary benefits paid as a result of the offset. Also, it avoids disruption of weekly benefits to those employees who are permanently and totally disabled.

Currently, a finding of PTD can be obtained by the employer, insurer, or employee, by petition to a compensation judge or by stipulated agreement approved by the commissioner or compensation judge. In addition to these formal procedures, an insurer or employer may apply for an informal administrative finding of PTD under Minn. Rules, Parts 5222.0100 through 5222.1000. Under those rules, the Commissioner may, in cases which satisfy the requirements provided therein, make a finding of PTD without an administrative conference or hearing.

Among the requirements provided in the existing rules is that the total amount of weekly benefits, from both workers' compensation and other government disability programs, will not be reduced as a result of the finding. In cases where the finding would result in an overall reduction in benefits, the employer or insurer is forced to proceed by way of a formal petition or stipulated agreement. This is true even where there is no dispute over the issue of PTD. The purpose of this requirement is to avoid reducing monetary benefits without the opportunity for a due process hearing. The proposed rule, while leaving the formal procedures intact, would modify the existing rules to allow a finding of PTD even where there is an overall reduction in benefits so long as there is no dispute over the issue of PTD.

Minn. Rules Part 5222.0100 Definitions. Subpart 3 is amended, and subpart 3a added, to reflect the changes resulting from the Christensen case and the change to an agreement-based process for PTD determinations. Prior to Christensen it was only important to know the effective date of the offset because Part 5222.0200 provided that all past total disability benefits would be counted toward the \$25,000 statutory requirement. After Christensen it is necessary to distinguish between the effective date of PTD and the effective date of the offset because only PTD benefits paid after the effective date of PTD are includable in the \$25,000. The addition of the word "proposed" simply reflects the necessity for approval by the Commissioner.

Subpart 4 is amended to add some specificity to the language consistent with current practice and law.

Subpart 5 is repealed because as a result of the amendments, it is not necessary to have a special definition of "party".

Subpart 8 is repealed because since Christensen "total disability benefits" are no longer the basis for the \$25,000 payment requirement for an offset.

Minn. Rules Part 5222.0200 Authority and Purpose. The Laws of Minnesota citation in this provision is changed to the parallel citation in Minnesota Statutes. The word "employers" is changed to "an employer" for clarity. The last sentence is deleted because it conflicts with the decision in Christensen.

Minn. Rules Part 5222.0300 Scope. The title of this rule is changed from "Application" to "Scope" to avoid confusion. This Part sets out the limits or scope of the rule's applicability rather than instructions on how to "apply" for a finding of PTD. Minn. Rules Chapter 5222 includes other sets of rules in addition to Parts 5222.0100 to 5222.1100. This part is corrected to reflect it's limited applicability.

Requirement "A" is amended to change the test for "without interruption" to a more flexible test which will allow a case-by-case determination.

Requirement "C" is amended, as a result of Christensen, to allow for situations where the employer/insurer will want to request a finding of PTD, before the employee is eligible for supplementary benefits, in order to reach the \$25,000 level by the time the employee is eligible for supplementary benefits.

Requirement "D" is amended to eliminate the exclusion of cases where PTD was raised in a proceeding but not decided. Other changes are for clarification.

Requirement "E" is eliminated and incorporated into "D".

Requirement "F" and "G" are eliminated because of the agreement nature of the new rule and a desire to make the rule less restrictive.

Requirement "H" is redesignated as "E" and amended to reflect the agreement nature of the rule changes.

A new requirement "F" is added to require agreement between the employer/insurer and the employee as a precondition for the application of these rules.

Minn. Rules Part 5222.0400 Procedure. The changes to this Part provide that a signed agreement must be submitted to the Commissioner rather than an application. Most of the changes are from "application" to "agreement". This Part also requires that the employer/insurer provide instructions to the employee with the agreement. The instructions are provided on the agreement form prescribed by the Commissioner.

Minn. Rules Part 5222.0500 Approval By Commissioner. The title of this Part is changed from "Notice of Decision" to "Approval by Commissioner" in order to improve the structure of the rule. Amendments to this part eliminate the possibility of an approval by default due to lack of action by the Commissioner. Approval of an agreement occurs upon the Commissioner's signature.

Minn. Rules Part 5222.0600 Disapproval By Commissioner. The changes to this Part make the language consistent with the agreement process and Christensen. Item "C" is clarified to show that the Commissioner's determination, under that item, should be based upon medical or rehabilitation reports. Item "D" allows the Commissioner to disapprove an agreement if the proposed effective date of PTD is not supported by the available information.

Minn. Rules Part 5222.0650 Notice of Decision. This Part is new but incorporates some of the language eliminated in Part 5222.0500. Requires the Commissioner to send a copy of the decision, approving or disapproving an agreement, to each party within 30 days of receipt, of a completed agreement, by the Special Compensation Fund.

Minn. Rules Part 5222.0700 Effect of Disapproval. The effect of disapproval by the Commissioner is not changed by the rule but because the effect of approval is different, that effect is set out separately in the next Part.

Minn. Rules Part 5222.0750 Effect of Approval. This Part provides that the Commissioner's Order constitutes a final Order. Because the Finding of PTD is based on agreement among the parties, the Commissioner's Order is given some finality.

Minn. Rules Part 5222.0800 Revision of Finding. This Part is repealed for two reasons. First, because the Finding of PTD is based on agreement, there is less need to revise a Finding. Second, limiting revision of PTD determinations to the existing mechanisms (i.e. Vacation of Order) gives more finality to the decision.

Minn. Rules Part 5222.0900 Severability. This Part is unchanged.

Minn. Rules Part 5222.1000 Effective Date. This Part is unchanged.

#### Impact on Small Business

The adoption of the proposed rules has no impact on small business. The rules affect only insurers and self-insured employers, none of which are small businesses as defined by M. S. § 14.115, subd. 2 (1988) for reducing the impact of the rule on small business.

#### Fiscal Impact on Local Public Bodies

The Commissioner has considered the fiscal impact of the adoption of these rules on local public bodies pursuant to M. S. § 14.11, subd. 1 (1988), and has found none. No additional financial burdens are placed on local public bodies as the proposed changes will not affect the expenditure of public monies by local public bodies.