

## CHAPTER 90.

[ S. B. 47. ]

APPEALS FROM DECISIONS OF DEPARTMENT OF  
LABOR AND INDUSTRIES.

AN ACT relating to proceedings before the Department of Labor and Industries and appeals from orders, decisions and/or awards thereof, and appeals to the superior court from orders, decisions and/or awards of the joint board of said department, and reserving to all parties having a cause of action existing at the time Chapter 132 of the Session Laws of 1929 took effect, to bring and prosecute proceedings and/or action thereon, and amending Section 6 of said Chapter 132 of the Session Laws of 1929, and declaring that this act shall take effect immediately.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. That section 6 of chapter 132 of the Session Laws of 1929, be amended to read as follows:

Amends § 6,  
ch. 132, Laws  
of 1929.

Section 6. Whenever the department of labor and industries has made any order, decision or award, it shall promptly serve the claimant, employer or other person affected thereby, with a copy thereof by mail, which shall be addressed to such claimant, employer or person at his last known address as shown by the records of the department. Any claimant, employer or other person aggrieved by any such order, decision or award must, before he appeals to the courts, serve upon the director of labor and industries, by mail or personally, within sixty days from the day on which such copy of such order, decision or award was communicated to the applicant, an application for rehearing before the joint board of said department, consisting of the director of labor and industries, the supervisor of industrial insurance and the supervisor of safety. Such application shall set forth in full detail the grounds upon which the applicant considers such order, decision or award is unjust or unlawful, and

Department  
of labor and  
industries.

Decisions,  
service.

Application  
for rehear-  
ing.

Joint board.

Contents.

shall include every issue to be considered by the joint board, and it must contain a detailed statement of facts upon which such claimant, employer or other person relies in support thereof. The claimant, employer or other person shall be deemed to have waived all objections or irregularities concerning the matter on which such rehearing is sought other than those specifically set forth in such application for rehearing or appearing in the records of the department. If the joint board, in its opinion, considers that the department has previously considered fully all matters raised by such application it may, without further hearing, deny the same and confirm the previous decision or award, or if the evidence on file with the joint board sustains the applicant's contention, it may, without further hearing, allow the relief asked in such application; otherwise, it shall order a rehearing to decide the issues raised.

If a rehearing be granted it shall be heard in the county of the residence of the applicant at a place designated by the joint board, but the hearing thereof may be adjourned from time to time and from place to place within said county, as the convenience of witnesses may require. Such rehearing shall be de novo and summary, but no witness' testimony shall be received unless he shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard, or unless his testimony shall have been taken by deposition according to the statutes relating to superior courts of this state. The joint board shall cause all oral testimony to be stenographically reported and thereafter transcribed, and when transcribed the same, with all depositions, shall be filed in, and remain a part of, the record on the rehearing. Such rehearing may be conducted by one or more of the members of the joint board, or by some person or persons in the regular employ of the de-

Objections waived.

Rehearing denied.

Granted.

Rehearing de novo.

Testimony.

Stenographically reported.

Conduct of rehearing.

partment, duly commissioned by said board to conduct such hearing, but the record on rehearing shall be considered by all of the members of said joint board, and the decision of a majority of said joint board shall be the decision of said joint board, and upon such decision being rendered all parties to said rehearing shall be given written notice thereof by the joint board.

An application for rehearing shall be deemed to have been denied by the joint board unless it shall have been acted upon within thirty days from the date of service: *Provided, however,* That the joint board may in its discretion, extend the time within which it may act upon such application, not exceeding thirty days.

Rehearing  
denied unless  
acted upon.

Each of the members of the joint board, and those commissioned by it as aforesaid, shall have power to administer oaths; to preserve and enforce order during such rehearing; to issue subpoenas for, and to compel the attendance and testimony of, witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do; to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his office.

Powers of  
joint board.

If any person in proceedings before the joint board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the joint board or any member thereof shall certify the

Joint board  
orders, dis-  
obedience.

facts to the superior court having jurisdiction in the place in which said joint board or member thereof is sitting; it shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the proceedings, or in the presence, of the court.

Punished for contempt by court.

Within thirty days after the final order of the joint board upon such application for rehearing has been communicated to such applicant, or within thirty days after rehearing is deemed denied as herein provided, such applicant may appeal to the superior court of the county of his residence, but upon such appeal may raise only such issues of law or fact as were properly included in his application for rehearing, or in the complete record in the department. On such appeal the hearing shall be de novo, but the appellant shall not be permitted to offer, and the court shall not receive, in support of such appeal, evidence or testimony other than, or in addition to, that offered before the joint board or included in the record filed by the department: *Provided*, That the right of cross examination shall not be limited by the testimony before the joint board. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director of labor and industries. The department of labor and industries shall, within twenty days after receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. No bond shall be required

Appeals from joint board final order.

Appeal hearing de novo.

Cross examination.

Appearance in appeal.

on such appeal or on appeals to the supreme court, except that an appeal by the employer from a decision of the department under section 7683 of Remington's Compiled Statutes shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court, except that in cases arising under section 7683 and 7690 of Remington's Compiled Statutes, either party shall be entitled to a jury trial upon demand.

Appeal bond.

Jury.

The department of labor and industries shall serve upon the appellant and file with the clerk of the court before trial, a certified copy of its complete record on the claim, which shall, upon being so filed, become a part of the record in such case.

Record of department.

If the court shall determine that the department has acted within its power and has correctly construed the law and found the facts, the decision of the department shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the department of labor and industries with an order directing it to proceed in accordance with the findings of the court: *Provided*, That any award shall be in accordance with the schedule of compensation set forth in this act.

Confirmation of decision.

Modification or reversal.

It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and if the decision of the joint board shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Ap-

Fees, attorney, witnesses.

Appeals to  
supreme  
court.

peal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the joint board and shall represent it in all proceedings. In all court proceedings under or pursuant to this act the decision of the department shall be prima facie correct and the burden of proof shall be upon the party attacking the same. This act shall not affect any cause of action existing at the time said chapter 132 of the Session Laws of 1929 became effective, or the right to take an appeal and/or bring an action thereon, or any appeal pending, or right of appeal existing at the time said chapter 132 of the Session Laws of 1929 became effective.

Existing  
actions.

Effective  
immediately.

SEC. 2. This act is necessary for the immediate support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 10, 1931.

Passed the House March 9, 1931.

Approved by the Governor March 19, 1931.

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## CHAPTER 91.

[ S. B. 86. ]

### WHARVES AND BUILDINGS IN HOLMAN WATERWAY AT ILWACO.

AN ACT granting to P. J. McGowan & Sons, a corporation, its successors and assigns, the right and privilege to maintain and use certain wharves and buildings upon a portion of Holman waterway in front of the town of Ilwaco.

*Be it enacted by the Legislature of the State of Washington:*

P. J. Mc-  
Gowan &  
Sons granted  
use.

SECTION 1. That there is hereby granted to P. J. McGowan & Sons, a corporation, its successors and assigns, the right and privilege, for a period of ten years from and after the fourteenth day of March, 1933, to maintain certain wharves and buildings,