

semble and maintain records of all reliable survey monuments and bench marks within the state;

(4) Supervise the sale of maps and such publications as may come into the possession of the division of surveys and maps. Revenue derived from the sale thereof shall revert to the general fund; and

Supervise  
sale of maps.

(5) Submit, as part of the biennial report of the commissioner of public lands, a report of the accomplishments of the agency.

Reports.

SEC. 7. If any provision of this act shall be declared invalid, such invalidity shall not affect any other portion of this act which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.

Partial  
invalidity.

Passed the House February 27, 1951.

Passed the Senate March 6, 1951.

Approved by the Governor March 17, 1951.

---

## CHAPTER 225.

[ H. B. 533. ]

### INDUSTRIAL INSURANCE—BOARD OF APPEALS.

AN ACT relating to industrial insurance and the board of industrial insurance appeals; defining the board's functions and duties, providing for appeals and reviews in certain cases, regulating attorney's fees in such reviews and appeals, amending sections 51.52.010 to 51.52.150, inclusive, R.C.W., and adding new sections to chapter 51.52, R.C.W.

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

SECTION 1. Section 51.52.010, R.C.W., as derived from section 2, chapter 219, Laws of 1949, is amended to read as follows:

Amendment.

There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor as hereinafter provided. One shall be a representative

"Board"

members.

Public's representative as chairman.

of the public and a lawyer, appointed from a mutually agreed to list of not less than three active members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairman of said board. The second member shall be a representative of the majority of workmen engaged in extra-hazardous employment and selected from a list of not less than three names submitted to the governor by an organization, state-wide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state.

Workmen's representative.

Employer's representative.

The third member shall be a representative of employers engaged in extra-hazardous industry, and appointed from a list of at least three names submitted to the governor by a recognized state-wide organization of employers, representing a majority of employers who are substantial contributors to the industrial insurance and accident fund. The

Terms of office.

initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his successor is appointed and qualified. In the event of a

Vacancies.

vacancy the governor is authorized to appoint a successor to fill the unexpired term of his predecessor. All appointments to the board shall be made in conformity with the foregoing plan. Members shall devote their entire time to the duties of the board and shall receive for their services a salary which shall be in addition to reasonable travel allowance as follows: The chairman shall receive the same salary as that provided for superior court judges in class A counties; the two remaining members shall each receive the same salary less the sum of five hundred dollars *per annum*. Headquarters for the

Compensation.

board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized. Office head-quarters.

[R.C.W. 51.52.010 was derived from Rem. Supp. 1949, § 10837-1.]

SEC. 2. Section 51.52.020, R.C.W., as derived from section 3, chapter 219, Laws of 1949, is amended to read as follows: Amendment.

The board may make rules and regulations concerning its functions and procedure, which shall have the force and effect of law until altered, repealed, or set aside by the board: *Provided*, That the board may not delegate to any other person its duties of interpreting the testimony and making the final decision and order on appeal cases. All rules and regulations adopted by the board shall be printed and copies thereof shall be readily available to the public. Rules and regulations. Certain duties non-delegable. Copies of rules and regulations.

[R.C.W. 51.52.020 was derived from Rem. Supp. 1949, § 10837-2; part (first two sentences).]

SEC. 3. Section 51.52.030, R.C.W., as derived from section 3, chapter 219, Laws of 1949, is amended to read as follows: Amendment.

The board may incur such expenses as are reasonably necessary to carry out its duties hereunder, which expenses shall be paid, one-half from the accident fund and one-half from the medical aid fund upon vouchers approved by the board. Expenses of board; how paid.

[R.C.W. 51.52.030 was derived from Rem. Supp. 1949, § 10837-2; part (last two sentences).]

SEC. 4. Section 51.52.040, R.C.W., as derived from section 4, chapter 219, Laws of 1949, is amended to read as follows: Amendment.

Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit the original of such written charges to the chief justice of the supreme court and a copy thereof to the member accused. The chief justice shall thereupon designate a special Removal from board; procedure for.

tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review.

[R.C.W. 51.52.040 was derived from Rem. Supp. 1949, § 10837-3.]

Amendment. SEC. 5. Section 51.52.050, R.C.W., as derived from section 6, chapter 219, Laws of 1949, is amended to read as follows:

Whenever the department of labor and industries, hereinafter called the "department," has made any order, decision, or award, it shall promptly serve the workman, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, which shall be addressed to such person at his last known address as shown by the records of the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award must be appealed to the board of industrial insurance appeals, Olympia, within sixty days, or the same shall become final.

Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the workman, beneficiary, employer, or other person aggrieved thereby may appeal to the board and any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter.

[R.C.W. 51.52.050, first paragraph was derived from Rem. Supp. 1949, § 7697; part (first two sentences).]

Amendment. SEC. 6. Section 51.52.060, R.C.W., as derived from section 1, chapter 219, Laws of 1949, and section 6,

chapter 219, Laws of 1949, is amended to read as follows:

Any workman, beneficiary, employer, or other person aggrieved by any order, decision, or award of the department must, before he appeals to the courts, file with the board and 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 such person, a notice of appeal to the board: *Provided*, That failure to file notice of appeal with both the board and the department shall not be ground for denying the appeal if the notice of appeal is filed with either the board or the department: *Provided further*, That, if within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department shall direct the submission of further evidence or the investigation of any further fact, the time for filing such notice of appeal shall not commence to run until such person shall have been advised in writing of the final decision of the department in the matter: *Provided further*, That the department, either before receiving a notice of appeal, or within thirty days thereafter, may modify, reverse or change any order, decision, or award, and the person appealing to the board may thereupon withdraw his appeal.

Notice of appeal to the board; when and how filed.

Where department makes further inquiry.

Department may alter decision, when; effect.

[R.C.W. 51.52.060 was derived from Rem. Supp. 1949, § 7697; part (third sentence and first proviso) and from Rem. Supp. 1949, § 7679; part (proviso appearing in second paragraph of subsection h).]

SEC. 7. Section 51.52.070, R.C.W., as derived from section 6, chapter 219, Laws of 1949, is amended to read as follows:

Amendment.

The notice on appeal to the board shall set forth in full detail the grounds upon which the person appealing considers such order, decision, or award is unjust or unlawful, and shall include every issue to be considered by the board, and it must contain

Notice of appeal; contents.

Objection or irregularities deemed waived, when.

Department to transmit record.

a detailed statement of facts upon which such workman, beneficiary, employer, or other person relies in support thereof. The workman, beneficiary, employer, or other person shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in such notice of appeal or appearing in the records of the department. The department shall promptly transmit its original record in such matter to the board.

[R.C.W. 51.52.070 was derived from Rem. Supp. 1949, § 7697; part (4th, 5th and 6th sentences to the proviso in the sixth sentence).]

Amendment.

SEC. 8. Section 51.52.080, R.C.W., as derived from section 6, chapter 219, Laws of 1949, is amended to read as follows:

Appeal; confirmation of award or allowance of relief asked without hearing, when.

If the board finds that the department properly and lawfully decided all matters raised by such appeal it may, without further hearing, deny the same and confirm the department's decision or award, or if the department's record sustains the contention of the person appealing to the board, it may, without further hearing, allow the relief asked in such appeal; otherwise, it shall grant the appeal and order a hearing to decide the issues raised.

[R.C.W. 51.52.080 was derived from Rem. Supp. 1949, § 7697; part (sentence following first proviso).]

Amendment.

SEC. 9. Section 51.52.090, R.C.W., as derived from section 6, chapter 219, Laws of 1949, is amended to read as follows:

Appeal deemed denied, when.

If the appeal is not granted within thirty days after the notice is filed with the board, the appeal shall be deemed to have been denied: *Provided*, That the board may extend the time within which it may act upon such appeal, not exceeding thirty days.

[R.C.W. 51.52.090 was derived from Rem. Supp. 1949, § 7697; part (second paragraph).]

New section.

SEC. 10. A new section is added to chapter 51.52, R.C.W., to read as follows:

The board, upon request of the workman, beneficiary, or employer, or upon its own motion, may direct all parties interested in an appeal, together with their attorneys, if any, to appear before it, a member of the board, or an authorized representative thereof, for a conference for the purpose of determining the feasibility of settlement, the simplification of issues of law and fact, the necessity of amendments to the notice of appeal or other pleadings, the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, the limitation of the number of expert witnesses, and such other matters as may aid in the disposition of the appeal. Such conference may be held prior to the hearing, or it may be held during the hearing, at the discretion of the member or representative of the board conducting the same, in which case the hearing will be recessed for such conference. Following the conference, if held before hearing, the board shall make an order which recites the actions taken at the conference, and the agreements made by the parties as to any of the matters considered, and which limits the issues at hearings to those not disposed of by said admissions or agreements of the parties. If the conference is held during the hearing, the board, or the member or representative thereof conducting the same, shall state on the record the results of such conference. The order or the statement on the record, as the case may be, shall control the subsequent course of the proceedings, unless modified at a subsequent hearing to prevent manifest injustice. If agreement concerning final disposition of the appeal is reached by the parties present at the conference, or by the employer and workman or beneficiary, the board may enter a final decision and order in accordance therewith, providing the board finds such agreement is in conformity with the law and the facts.

Conference of all parties interested in an appeal.

Purposes.

Conference held, when.

Pre-hearing conference; order reciting results.

Conference during trial; results stated on the record.

Order or record controls subsequent proceedings.

Conference may be basis for final disposition of appeal.

Amendment. SEC. 11. Section 51.52.100, R.C.W., as derived from section 6, chapter 219, Laws of 1949, is amended to read as follows:

Hearings; where held. Hearings shall be held in the county of the residence of the workman or beneficiary, or in the county where the injury occurred, at a place designated by the board. Such hearing 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 department shall be entitled to appear in all proceedings before the board and introduce testimony in support of its order. The 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 appeal. Such hearings on appeal to the board may be conducted by one or more of its members, or a duly authorized representative, and depositions may be taken by a person duly commissioned for the purpose by the board.

*De novo* and summary.

Witnesses to be sworn.

Department may appear.

Testimony reported and transcribed.

Conducted by whom.

Depositions.

Oaths, subpoenas, depositions; powers and duties of members, representatives and persons commissioned. Members of the board, its duly authorized representatives, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; 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.



If any person in proceedings before the 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 board or any member or duly authorized representative thereof shall certify the facts to the superior court having jurisdiction in the place in which said board or member or duly authorized representative thereof is sitting; the court 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.

Certain acts punishable as for contempt; procedure.

[R.C.W. 51.52.100 was derived from Rem. Supp. 1949, § 7697; part (sentence commencing on 7th line from bottom of p. 611 to end of paragraph, and all of 3rd and 4th paragraphs).]

SEC. 12. A new section is added to chapter 51.52, R.C.W., to read as follows: New section.

At the time and place fixed for hearing each party shall present all his evidence with respect to the issues raised in the notice of appeal, and if any party fails so to do, the board may determine the issues upon such evidence as may be presented to it at said hearing: *Provided*, That for good cause shown in the record to prevent hardship, the board may grant continuances upon application of any party, but such continuances, when granted, shall be to a time and place certain within the county where the initial hearing was held unless it shall appear that a continuance elsewhere is required in justice to inter-

Hearing; determination of issues upon evidence presented.

Continuances.

Continuance on board's motion for purpose of securing additional evidence.

ested parties: *And provided further*, That the board may continue hearings on its own motion to secure in an impartial manner such evidence, in addition to that presented by the parties, as the board, in its opinion, deems necessary to decide the appeal fairly and equitably, but such additional evidence shall be received subject to any objection as to its admissibility, and, if admitted in evidence all parties shall be given full opportunity for cross-examination and to present rebuttal evidence.

Right of cross-examination and rebuttal preserved.

New section.

SEC. 13. A new section is added to chapter 51.52, R.C.W., to read as follows:

Appeal; all members to consider record; majority decision.

On appeal to the board the record before it shall be considered by all of the members of the board, and the decision and order of the majority of the members shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. In cases involving injured workmen the findings and conclusions shall contain a concise statement of the board's jurisdiction, the nature of the workman's injury, the pathological condition, if any, resulting therefrom, the physiological disability, if any, resulting from such pathological condition, and any other material facts pertinent to the case, as well as the relief, including the statutory percentage of disability, if any, to which the workman or beneficiary is entitled. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal and to his attorney of record.

Final decisions and orders; contents.

Copies to be mailed to each party.

Amendment.

SEC. 14. Section 51.52.110, R.C.W., as derived from section 6, chapter 219, Laws of 1949, is amended to read as follows:

Appeal to superior court from final order of the board; procedure.

Within thirty days after the final decision and order of the board upon such appeal has been communicated to such workman, beneficiary, employer

or other person, or within thirty days after the appeal is deemed denied as herein provided, such workman, beneficiary, employer or other person aggrieved by the decision and order of the board may appeal to the superior court. In cases involving injured workmen such appeal shall be to the superior court of the county of residence of the workman or beneficiary, or to the superior court of the county wherein the injury occurred. In all other cases the appeal shall be to the superior court of Thurston County. 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 and on the board. The department 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. The board shall serve upon the appealing party, the director of labor and industries and any other party appearing at the board's proceeding, and file with the clerk of the court before trial, a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order, which shall, become the record in such case. No bond shall be required on appeals to the superior court or on appeals to the supreme court, except that an appeal by the employer from a decision and order of the board under 51.48.070, R.C.W., 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.

Appeal bond.

[R.C.W. 51.52.110 was derived from Rem. Supp. 1949, § 7697; part (5th, 6th, 7th and 8th paragraphs).]

[R.C.W. 51.48.070 was derived from R.R.S. § 7683.]

SEC. 15. A new section is added to chapter 51.52, R.C.W., to read as follows:

New section.

Appeal  
to superior  
court; scope  
of review.

Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be *de novo*, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in 51.52.110, R.C.W.: *Provided*, That in cases of alleged irregularities in procedure before the board, not shown in said record, testimony thereon may be taken in the superior court. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. In all court proceedings under or pursuant to this title the findings and decision of the board shall be *prima facie* correct and the burden of proof shall be upon the party attacking the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board 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 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 title. In appeals to the superior court hereunder, either party shall be entitled to a trial by jury upon demand, and the jury's verdict shall have the same force and effect as in actions at law. Where the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court.

Findings and  
decision of  
board,  
*prima facie*  
correct.

Judgment.

Jury trial.

[R.C.W. 51.52.110, also amended by this act, appears as sec. 14, *supra*.]

SEC. 16. Section 51.52.130, R.C.W., as derived from section 3, chapter 246, Laws of 1947, is renumbered section 51.52.120, R.C.W., and amended to read as follows:

Amendment.

It shall be unlawful for an attorney engaged in the representation of any workman or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not less than ten per cent nor more than thirty-five per cent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director of labor and industries for services performed by an attorney for such workman or beneficiary, prior to the notice of appeal to the board. If, on appeal to the board, the order, decision or award of the department is reversed or modified and additional relief is granted to a workman or beneficiary, or in cases where a party other than the workman or beneficiary is the appealing party and the workman's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his attorney in proceedings before the board if written application therefor is made by the attorney. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director of labor and industries, for services before the department, and the board may review the fee fixed by said director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney.

Attorney's fees for services in the department.

Fees on appeal to board.

Review of fee.

[R.C.W. 51.52.130 was derived from Rem. Supp. 1947, § 7679-3.]

SEC. 17. Section 51.52.120, R.C.W., as derived from section 6, chapter 219, Laws of 1949, is renumbered 51.52.130, R.C.W., and amended to read as follows:

Amendment.

If, on appeal to the court from the decision and order of the board, said decision and order is re-

Attorney's fees for services on appeal to superior court.

Where fee below was inadequate.

Fund chargeable.

versed or modified and additional relief is granted to a workman or beneficiary, or in cases where a party other than the workman or beneficiary is the appealing party and the workman's or beneficiary's right to relief is sustained by the court, a reasonable fee for the services of the workman's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director of labor and industries and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director of labor and industries or by the board is inadequate for services performed before the department or board, or if the director of labor and industries or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If the decision and order of the board is reversed or modified and if the accident fund is affected by the litigation then the attorney's fee fixed by the court for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department.

[R.C.W. 51.52.120 was derived from Rem. Supp. 1949, § 7697; part (first sentence of last paragraph).]

New section.

SEC. 18. A new section is added to chapter 51.52, R.C.W., to read as follows:

Unlawful to accept fees except as fixed.

It shall be unlawful for any attorney representing a workman before the department or the board or the court to charge or receive either directly or indirectly any fee, unless the same has been previously fixed as provided in 51.52.120 or 51.52.130, R.C.W., or to charge or receive either directly or indirectly any fee or fees greater in amount than the fee or fees so fixed.

[R.C.W. 51.52.120, also amended by this act, appears above as section 17. R.C.W. 51.52.130, also amended by this act, appears above as section 16.]

SEC. 19. Section 51.52.140, R.C.W., as derived from section 6, chapter 219, Laws of 1949, is amended to read as follows: Amendment.

Except as otherwise provided in this chapter, the practice in civil cases shall apply, to appeals prescribed in this chapter. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal advisor of the department and the board. Practice in civil cases applies.  
Attorney general.

[R.C.W. 51.52.140 was derived from Rem. Supp. 1949, § 7697; part (last four sentences of last paragraph).]

SEC. 20. Section 51.52.150, R.C.W., as derived from section 1, chapter 116, Laws of 1931, is amended to read as follows: Amendment.

All expenses and costs incurred by the department for board and court appeals, including fees for medical and other witnesses, court reporter costs and attorney's fees, and all costs taxed against the department, shall be paid one-half out of the medical aid fund and one-half out of the accident fund. Appeal costs and expenses of department; funds chargeable.

[R.C.W. 51.52.150 was derived from R.R.S. § 7697-1.]

SEC. 21. A new section is added to chapter 51.52, R.C.W., to read as follows: New section.

If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional. Partial invalidity.

Passed the House March 2, 1951.

Passed the Senate March 6, 1951.

Approved by the Governor March 17, 1951.