

SUBJECT: Establishing time limits for certain workers' compensation disputes

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Giddings, Elkins, Kolkhorst, Bohac, Martinez Fischer, Oliveira, Solomons, Zedler

0 nays

1 absent — J. Moreno

SENATE VOTE: On final passage, May 13 — voice vote

WITNESSES: For — Rick Levy, Texas AFL-CIO

Against — Kenneth Howell

On — Robert Shipe, Texas Workers' Compensation Commission

BACKGROUND: An injured employee is entitled to receive temporary workers' compensation benefits until a doctor certifies that the employee has reached maximum medical improvement. Under Labor Code, sec. 408.123, after an employee has been certified by a doctor as having reached maximum medical improvement, the certifying doctor must assign an impairment rating to the employee, which determines the length of time the employee will receive benefits. The doctor submits a report to the Texas Workers' Compensation Commission (TWCC), the employee, and the insurance carrier stating the impairment rating. If an employee is not certified as having reached maximum medical improvement within 104 weeks after the date the income benefits began to accrue, TWCC must notify the treating doctor that an impairment rating is needed.

Before the Austin Court of Appeals rendered its 2001 decision in *Fulton v. Associated Indemnity Corporation*, 46 S.W.3d 364, a TWCC rule specified that an employee's first valid certification of maximum medical improvement and first valid assignment of impairment rating is final if the certification or assignment was not disputed within 90 days of the date written notification is

provided to the employee and the carrier. However, the appellate court found that TWCC did not have the statutory authority to make this rule.

DIGEST:

CSSB 820 would amend the Labor Code to specify that an employee's first valid certification of maximum medical improvement and first valid assignment of an impairment rating was final if the certification or assignment was not disputed within 90 days after the date when written notification was provided to the employee and insurance carrier. The employee's first certification of maximum improvement or assignment of an impairment rating could be disputed after that time period if compelling medical evidence existed of:

- a significant error by the certifying doctor in applying the appropriate medical guidelines or in calculating the impairment rating;
- a clearly mistaken diagnosis or a previously undiagnosed condition; or
- improper or inadequate treatment of the injury before the date of the certification or assignment that would render those invalid;

or if other compelling circumstances existed as prescribed by TWCC rule.

If an employee had not been certified as having reached maximum medical improvement within 104 weeks after the date when income benefits began to accrue or before the expiration of an extension of benefits under Labor Code, sec. 408.104, relating to maximum medical improvement after spinal surgery, the impairment rating assigned after the expiration of either of those periods would be final unless it was disputed within 90 days of the date when written notification was provided to the employee and carrier.

If an employee's disputed certification of maximum medical improvement or assignment of impairment rating was finally modified, overturned, or withdrawn, the first certification or assignment made after that date would become final if the certification or assignment was not disputed within 90 days after the date the employee and carrier were notified of the certification or assignment.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 820 would write into statute the limitations that TWCC placed by rule on appeals of certification of maximum medical improvement and assignment of impairment ratings before the *Fulton* decision. These limitations would give workers adequate time to appeal these ratings and a mechanism for addressing their objections, while ensuring that objections would be raised in a timely manner and that costs would be kept at a reasonable level.

By limiting how long an employee would have to appeal these ratings, the bill would reduce costs to employers while ensuring that injured employees received the appropriate amount of care. A deadline for appeals is necessary so that insurers can ascertain the amount of benefits an employee will receive. Because circumstances may cause a need for an employee to appeal the impairment rating after the deadline, CSSB 820 would safeguard an employee's right to object by specifying factors that could be used to extend the deadline. An employee could appeal after the deadline if the certifying doctor had made a significant error in applying the appropriate medical criteria or had failed to diagnosis an illness. TWCC could prescribe rules that allowed appeals under a range of other compelling circumstances.

**OPPONENTS
SAY:**

CSSB 820 would give insurance companies another tool to send employees back to work prematurely. Often employees using the workers' compensation system are unrepresented and do not know of their appeal rights or may not know that the rating they have received is not correct. Employees need more time to appeal these ratings, because they may not discover the need to appeal until after the deadline has passed. The factors that could be considered to extend the deadline for filing would not cover all situations that might make it necessary for an employee to appeal after the deadline.

NOTES:

The committee substitute would allow reconsideration of both a certification of maximum medical improvement and an impairment rating after the 90-day deadline, whereas the Senate engrossed version only would have allowed reconsideration of impairment ratings.