

HOUSE BILL No. 5031

June 27, 1991, Introduced by Reps. Emerson, Jonker, Bennane and Clack and referred to the Committee on Labor.

A bill to amend section 253 of Act No. 317 of the Public Acts of 1969, entitled as amended
"Worker's disability compensation act of 1969,"
as added by Act No. 117 of the Public Acts of 1989, being section 418.253 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 253 of Act No. 317 of the Public Acts of
2 1969, as added by Act No. 117 of the Public Acts of 1989, being
3 section 418.253 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 253. (1) Beginning July 1, 1991, if ~~any~~ cases remain
6 to be decided by the board on the date that section 252 is
7 repealed as provided for in section 266, a worker's compensation
8 appeal board is created, referred to in this act as the board. ~~→~~
9 ~~which~~ THE BOARD shall consist of 5 permanent members

1 REPRESENTING THE GENERAL PUBLIC appointed by the governor with
2 the advice and consent of the senate ~~representing the general~~
3 ~~public~~ and qualified adjunct members as determined pursuant to
4 subsections (2) and (3). A permanent member of the board shall
5 ~~devote his or her entire time to and personally perform~~ SERVE
6 FULL-TIME IN PERFORMING the duties of the office and shall not
7 engage in other business or professional activity. A vacancy ON
8 THE BOARD shall be filled for an unexpired term in the same
9 manner as the original appointment.

10 (2) The chairperson of the appeal board shall be designated
11 by the governor. ~~and~~ THE CHAIRPERSON shall establish and main-
12 tain a list of qualified adjunct members. Each member of the
13 appeal board under former section 252 as of June 30, 1991 who had
14 met the productivity standards established for the previous 2
15 years under that section shall be qualified as an adjunct
16 member.

17 (3) ~~In addition, the~~ THE chairperson shall ~~select~~ ADD
18 additional persons to the list of qualified adjunct members who
19 meet 1 or more of the following requirements:

20 (a) ~~Be~~ IS an attorney licensed to practice in the state of
21 Michigan.

22 (b) ~~Be~~ IS a former or retired worker's disability compen-
23 sation magistrate.

24 (c) ~~Be~~ IS a former or retired worker's disability compen-
25 sation administrative law judge.

26 (4) Upon application for qualification as an adjunct member
27 of the appeal board, an individual shall indicate a designation

1 as an employer representative or an employee representative.

2 ~~Any questions~~ QUESTIONS concerning the qualifications of
3 adjunct members or whether the designation taken by an adjunct
4 member is appropriate shall be resolved by the department of
5 labor.

6 (5) The chairperson of the board shall employ a chief admin-
7 istrative officer for the board. The chairperson shall have gen-
8 eral supervisory control of and be in charge of the assignment
9 and reassignment of the work of the board and the board's employ-
10 ees, including the scheduling of the docket, ~~—~~ establishing
11 office hours and procedures, ~~—~~ setting productivity standards,
12 ~~—~~ and encouraging the use of arbitration, if appropriate. The
13 board may promulgate rules on administrative appellate
14 procedure.

15 (6) In addition to other duties of the chairperson pre-
16 scribed in this section, he or she shall preliminarily review
17 matters before the appeal board to determine if those matters may
18 be disposed of by arbitration or in some expeditious manner by
19 the appeal board.

20 (7) Beginning July 1, 1991, all cases pending before the
21 appeal board shall be assigned to a panel of 2 adjunct members of
22 the board for disposition. Except as otherwise provided in this
23 section, all assignments shall be on a random basis. At least 1
24 member of each panel shall be an attorney. Each panel shall be
25 composed of 1 member designated as an employee representative and
26 1 member designated as an employer representative. The
27 chairperson may refuse to assign cases to an adjunct member if he

1 or she determines that the member ALREADY has too many ASSIGNED
2 undecided cases. ~~already assigned.~~

3 (8) In assigning cases to panels, the chairperson shall pass
4 over an adjunct member if there is ~~any~~ AN indication of a
5 potential conflict of interest. Upon being assigned a case, each
6 member of a panel shall immediately review the case to determine
7 if there is ~~any~~ A potential conflict of interest and if one is
8 discovered, he or she shall notify the chairperson immediately.
9 The chairperson shall disqualify an adjunct member if the member
10 cannot impartially hear a case, including a case in which the
11 member:

12 (a) Is AN interested ~~as a~~ party.

13 (b) Is personally biased or prejudiced for or against a
14 party or attorney.

15 (c) Has been consulted or employed as an attorney in the
16 matter in controversy.

17 (d) Was a partner of a party, attorney for a party, or a
18 member of a law firm representing a party within the preceding
19 2 years.

20 If a conflict of interest is discovered or a member is disquali-
21 fied, the chairperson shall immediately reassign the case. Cases
22 shall be assigned to a 2-member panel of adjunct members in pairs
23 of 2 cases with 1 member of the panel having primary responsibil-
24 ity for each case. The adjunct members may consult with each
25 other with respect to cases assigned to ~~them~~ THE PANEL.

26 (9) The decision reached by the assigned members of a panel
27 shall be the final decision of the board. If the members of a

1 panel cannot reach a decision, the chairperson of the board shall
2 assign 1 of the general public permanent members of the board as
3 the third panel member to review the matter. The third panel
4 member shall choose between the 2 decisions of the assigned panel
5 members. The decision of the third panel member shall be the
6 decision of the board. If 1 panel member has decided the case
7 for which he or she has primary responsibility, the second panel
8 member shall have 30 additional days to decide his or her
9 assigned case. If the case is not decided within the 30 addi-
10 tional days, the chairperson of the board shall assign 1 of the
11 permanent members as the second panel member to review and decide
12 the case. If the new panel cannot reach a decision on the case
13 within 30 additional days, the chairperson of the board shall
14 assign 1 of the other permanent members of the board as a third
15 panel member in the same manner as ~~otherwise~~ provided in this
16 subsection.

17 (10) ~~When~~ IF the board has issued a final decision in both
18 cases of a pair of cases assigned to a panel of adjunct members,
19 each member of the panel shall be paid a fee of \$1,000.00. The
20 chairperson of the board may increase the fee paid to panel mem-
21 bers for an individual pair of cases if, after written applica-
22 tion by the panel members, the chair finds that 1 or both of the
23 cases in the pair were unusual and required an exceptional amount
24 of time and effort by the panel members.

25 (11) This section and sections 255, 265, 851a, and 859 are
26 repealed as of October 1, 1993 or when the governor advises the

1 secretary of state in writing that there are no more cases to be
2 decided by the appeal board, whichever occurs first.

3 (12) If ~~any cases are~~ A CASE IS to be remanded to the
4 appeal board by a court after October 1, 1993, ~~those cases~~ THEN
5 THE CASE shall be remanded to and decided by the appellate com-
6 mission established under section 274.

7 (13) If any cases remain to be decided by the board on the
8 date that this section is repealed as provided for in subsection
9 (11), those cases shall be reviewed and decided by the appellate
10 commission.

11 (14) ~~Any~~ A review of cases by the appellate commission
12 pursuant to subsection (12) or (13) shall be according to the law
13 applicable to reviews conducted by the appeal board.

14 (15) This section shall take effect July 1, 1991.