DEPARTMENT OF FINANCE
ADMINISTRATIVE CODE

CHAPTER 355-8-1
DIVISION OF RISK MANAGEMENT

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355-8-1-.01 Authority And Purpose.

Creation of this program was directed by Act 94-680, Regular Session 1994, Alabama State Legislature. Concurrently, there was established the State Employee Injury Compensation Trust Fund, with all receipts deposited in the Trust Fund used only to carry out the provisions of Act 94-680. The purpose of the Employee Injury Compensation Program is to provide compensation for employees of the state and its agencies, departments, boards, or commissions, except as excluded by law, who suffer personal injury as a result of accidents arising out of and in the course of their state employment. Terms and conditions of the Program are to be determined by the Director of Finance, State of Alabama. The Program is effective October 1, 1994. The cost of the program and its administration will be paid from the funds appropriated for the operation of state departments, agencies, boards and commissions, to which the Director of Finance may apportion the cost.

Author:

Statutory Authority: Code of Ala. 1975, Act 94-680, Regular Session.

History: **New Rule:** Filed September 30, 1994; effective November 4, 1994.

355-8-1-.02 General Provisions.

(a) Definitions. Throughout this program, the following words and phrases as used therein shall be considered to have the following meanings, respectively, unless the context shall clearly indicate a different meaning in the connection used:

(1) Accident. The term, as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident" shall be construed to mean an unexpected or unforeseen event, happening suddenly and violently, with or without human fault, and producing at the time injury to the physical structure of the body or damage to an artificial member of the body by accidental means.

(2) Adjudication. The review of claims to apply prevailing rules that adjust reimbursements for the amount of work required when multiple procedures are performed at the same time, when assisting surgeons are present, to eliminate duplicate billing from the unbundling of global fees, and to adjust for the most commonly occurring method adopted for total reimbursement.

(3) Benefits. The term shall in all cases be construed to mean compensation, medical, vocational or other benefits expended by the program on behalf of the employee.

(4) Bill Screening. The evaluation and adjudication of provider bills for appropriateness of reimbursement relative to medical necessity and prevailing rates of reimbursement, duplicate charges, unbundling of charges, relativeness of services to injury or illness, necessity of assistant surgeons, adjudication of multiple procedures, number of modalities, global procedures, and any other prevailing adjudication issues that may apply.

(5) Child or Children. The terms include posthumous children and all other children entitled by law to inherit as children of the deceased; stepchildren who were members of family of the deceased, at the time of the accident, and were dependent upon him or her for support; a grandchild of the deceased employee, whose father is dead or is an invalid, and who was supported by and a member of the family of the deceased grandparent at the time of the accident.

(6) Compensation. The money benefits to be paid on account of injury or death, as provided in Articles 2, 3 and 4. "Compensation" does not include medical and surgical treatment and attention, medicine, medical and surgical supplies, and crutches and apparatus furnished an employee on account of an injury.

(7) Contract Employee. A person employed by written contract who is deemed to be an employee, as opposed to an independent contractor, according to Internal Revenue Service criteria as applied by the State Comptroller and State Personnel Board.

(8) Dependent Child or Orphan. An unmarried child under the age of 18 years or one over that age who is physically or mentally incapacitated from earning.

(9) Division of Risk Management. A division of the State of Alabama, Department of Finance, charged with the implementation of this program. Also known as "DORM".

(10) Employee or Worker. The terms are used interchangeably and have the same meaning throughout this program. The terms include the plural and all ages and both sexes. The terms expressly include elected state officials and every person in the full time paid service of the employer, who is covered by the State Employees Insurance Board's medical insurance plan and whose wages are paid through the office of the state comptroller, provided that the assessed costs for the program have been paid by the employing agency. Other classes of employees may be covered if pre-approved by the Risk Manager, but coverage will not be effective until receipt by DORM of payment of assessed costs. Any reference in this program to a "worker" or "employee" shall, if the worker or employee is dead, include his or her dependent, as defined in this program.

(11) Employer. The State of Alabama and its agencies, departments, boards or commissions. The term shall include the Division of Risk Management, and service companies or agents with which it contracts for the administration of this program.

(12) Gender. Where the masculine gender is used, the feminine and neuter shall be included.

(13) Hospital. A hospital, ambulatory surgical center, outpatient rehabilitation center licensed by the State of Alabama, and diagnostic facilities accredited by the Commission on Accreditation of Rehabilitation Facilities.

(14) Injuries by an Accident Arising Out of and in the Course of the Employment. Without otherwise affecting either the meaning or interpretation of the clause, the clause does not cover workers except while engaged in or about the premises where their services are being performed or where their service requires their presence as a part of service at the time of the accident and during the hours of service as workers. Only injuries by an accident during the employee’s duties while under the right of control of the employer shall be considered as arising out of and in the course of employment.

(15) Injury. "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except for an occupational disease or where it results naturally and unavoidably from the accident. Injury shall include breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices which function as part

of the body, when injury to them is incidental to an on-the-job injury to the body. Injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him or her and not directed against him or her as an employee or because of his or her employment. Injury does not include a mental disorder or mental injury that has neither been produced nor been proximately caused by some physical injury to the body. Injury does not include physical injury caused by carpel tunnel syndrome disorder unless said disorder is a secondary condition which developed as a result of a specific injury by accident which occurred after the effective date of this program.

(16) Loss of Hand or Foot. Amputation between the elbow and wrist shall be considered as the equivalent to the loss of a hand, and the amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot.

(17) Medical. All services, treatment, or equipment provided by a provider.

(18) Participating and Nonparticipating Hospitals. Those hospitals that have a negotiated rate of reimbursement or payment with the Division of Risk Management. "Nonparticipating hospitals" means those hospitals that have not negotiated a rate of reimbursement or payment with the Division of Risk Management.

(19) Prevailing. The most commonly occurring reimbursements for health services, other than those provided by federal and state programs for the elderly (Medicare) and economically disadvantaged (Medicaid). "Prevailing" shall include not only amounts per procedure code, but also commonly used adjudication rules as applied to multiple procedures, global procedures, used of assistant surgeons, and others as appropriate. For hospitals, "prevailing" rate of reimbursement or payment shall be established by the method contained in Rule .04(p).

(20) Providers. A medical clinic, pharmacist, dentist, chiropractor, psychologist, podiatrist, physical therapist, pharmaceutical supply company, rehabilitation service, or other person or entity providing treatment, service, or equipment, or person or entity providing facilities at which the employee receives treatment.

(21) Review Board. A panel composed of three persons designated by the Risk Manager to hear and consider claims by employees whose disagree with the determination by the employer or its agent or service company as to the employee's entitlement to compensation and medical benefits under this program and to approve settlements when required by this

program. The Risk Manager and employees of the Division of Risk Management, along with other state employees, may be members of the Review Board.

(22) Singular and Plural. Wherever the singular is used, the plural shall be included.

(23) Utilization Review. The determination of medical necessity for medical and surgical in-hospital, out-patient, and alternative settings treatments for acute and rehabilitation care. It includes precertification for elective treatments. Concurrent review and, if necessary, retrospective review are required for emergency cases.

(24) Wages or Weekly Wages.

(i) The terms shall in all cases be construed to mean weekly earnings at the time of the injury, based on those earnings subject to federal income taxation and reportable on the State of Alabama tax form which shall include fringe benefits as defined herein. "Fringe benefits" shall mean the employer's portion of health insurance premiums and Retirement Systems of Alabama payments. Weekly earnings shall not include fringe benefits if and only if the employer continues the benefits during the time for which compensation is paid.

(ii) Determination of Average Weekly Earnings for Classes of Employees Who Are Other Than Full Time. Compensation under this section shall be computed on the basis of the average weekly earnings. Average weekly earnings shall be based on the wages of the injured employee in the state employment in which he or she was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury divided by 52, but if the injured employee lost more than seven consecutive calendar days during the period, although not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks, remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during the period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided results just and fair to both parties will thereby be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of his or her employer or the casual nature of terms of the employment it is impracticable to compute the average weekly earnings as above defined, regard shall be had to the average weekly amount which during the 52 weeks prior to the injury was being earned by a person in the same grade, employed at the same work by

the same employer, and if there is no person so employed, by a person in the same grade employed in the same class of employment in the same District. Whatever allowances of any character made to an employee in lieu of wages are specified as part of the wage contract shall be deemed a part of his or her earnings if and only if the employer does not continue those allowances.

(b) By accepting benefits under this program the employee agrees to release the employer and its officers and employees, professional or corporate agents of the employer and employees thereof, from any liability, other than that arising from willful conduct, for the injuries suffered by the employee for which benefits may be paid under this program. If an employee initiates a civil action against the employer or its officers or employees, or the employer's professional or corporate agents or employees thereof, other than for willful conduct, benefits under this program will terminate. If the injured employee, or in case of death, his or her dependents, recovers damages against another party, the amount of the damages recovered and collected shall be credited upon the liability of the employer for benefits. If the damages recovered and collected are in excess of the benefits payable under this chapter, there shall be no further liability on the employer to pay benefits on account of the injury or death. To the extent of the recovery of damages against the other party, the employer shall be entitled to reimbursement for the amount of compensation theretofore paid on account of injury or death. If the employee who recovers damages is receiving or entitled to receive compensation for permanent total disability, then the employer shall be entitled to reimbursement for the amount of benefits theretofore paid, and the employer's obligation to pay further compensation for permanent total disability shall be suspended for the number of weeks which equals the quotient of the total damage recovery, less the amount of any reimbursement for compensation already paid, divided by the amount of the weekly benefit for permanent total disability which the employee was receiving or to which the employee was entitled. The employer shall be entitled to subrogation for benefits expended by the employer on behalf of the employee.

(c) As used herein, "willful conduct" means any of the following:

(1) A purpose or intent or design to injure another; and if a person, with knowledge of the danger or peril to another, consciously pursues a course of conduct with a design, intent, and purpose of inflicting injury, then he or she is guilty of "willful conduct."

(2) The willful and intentional removal from a machine of a safety guard or safety device provided by the manufacturer of the machine with knowledge that injury or death would likely or probably result from the removal; provided, however, that removal of a guard or device shall not be willful conduct

unless the removal did, in fact, increase the danger in the use of the machine and was not done for the purpose of repair of the machine or was not part of an improvement or modification of the machine which rendered the safety device unnecessary or ineffective.

(3) The intoxication of another employee of the employer if the conduct of that employee has wrongfully and proximately caused injury or death to the plaintiff or plaintiff's decedent, but no employee shall be guilty of willful conduct on account of the intoxication of another employee or another person.

(4) Willful and intentional violation of a specific written safety rule of the employer after written notice to the violating employee by another employee who, within six months after the date of receipt of the written notice, suffers injury resulting in death or permanent total disability as a proximate result of the willful and intentional violation. The written notice to the violating employee shall state with specificity all of the following:

(i) The identity of the violating employee.

(ii) The specific written safety rule being violated and the manner of the violation.

(iii) That the violating employee has repeatedly and continually violated the specific written safety rule referred to in b. above with specific reference to previous times, dates, and circumstances.

(iv) That the violation places the notifying employee at risk of great injury or death.

A notice that does not contain all of the above elements shall not be valid notice for purposes of this section. An employee shall not be liable for the willful conduct if the injured employee himself or herself violated a safety rule, or otherwise contributed to his or her own injury. No employee shall be deemed to have committed willful conduct for the violation of any safety rule by any other employee or for failing to prevent any violation by any other employee. In the event the employer has paid benefits to the employee or his or her dependent, or in the event the employer has received a claim for the payment of the benefits, a civil action against a third party may be maintained either in the name of the injured employee, his or her dependent in case of death, the employer, or the insurance carrier. In the event the damages recovered in the civil action are in excess of the benefits payable by the employer under this chapter and cost, attorney's fees, and reasonable expenses incurred by the employer in making the collection, the excess of the amount shall be held

in trust for the injured employee or, in case of death, for the employee's dependents.
Author: P. Maddock
Statutory Authority: Code of Ala. 1975, §§36-29A-1 et seq.
History: **New Rule:** Filed September 30, 1994; effective November 4, 1994. **Amended:** Filed June 6, 1995; effective July 11, 1995. **Amended:** Filed October 30, 1995 effective December 4, 1995. **Amended:** Filed September 12, 1997; effective October 17, 1997.

355-8-1-.03 Benefits For Accidental Occupational Injuries.

(a) Compensation, according to the schedules hereinafter contained, shall be paid by the employer, in every case of personal injury or death of his or her employee caused by an accident arising out of and in the course of his or her employment, without regard to any question of negligence. Notwithstanding the foregoing, no benefits shall be allowed for an injury or death caused by the willful misconduct of the employee, by the employee's intention to bring about the injury or death of himself or herself or of another, his or her willful failure or willful refusal to use safety appliances provided by the employer or by an accident due to the injured employee being intoxicated from the use of alcohol or being impaired by illegal drugs.

(b) A positive drug test conducted and evaluated pursuant to standards adopted for drug testing by the U.S. Department of Transportation in 49 C.F.R. Part 40 shall be a rebuttable presumption of impairment resulting from the use of illegal drugs. No benefits shall be allowed if the employee refuses to submit to or cooperate with a blood or urine test as set forth above after the accident after being warned in writing by the employer that such refusal would forfeit the employee's right to recover benefits under this chapter.

(c) No benefits shall be allowed if, during the time of employment or in the course of entering into employment or at the time of receiving notice of the removal of conditions from a conditional offer of employment, the employee knowingly and falsely misrepresents in writing his or her physical or mental condition and the condition is aggravated or reinjured in an accident arising out of and in the course of his or her employment. Willful failure of an employee to abide by physician-directed physical activity restrictions arising from a covered injury, or willful misrepresentation by an employee of his or her physical activities while under physical activity restriction, will result in termination of benefits.

(d) In the event an injury covered by this program results in temporary or permanent total disability the employee or the employee’s representative must elect in writing either to utilize accumulated sick and/or annual leave or to accept employee injury

compensation benefits as set forth in Rule .04. Such election shall be made by the employee and received by DORM or its agent before any benefits are paid. An employee who elects to utilize sick and/or annual leave may later change his election in writing prospectively but not retroactively. When the employer no longer pays the employer's portion of retirement or the employee's health insurance premium, said portion will be paid by DORM or its agent directly to the employee as set forth in Rule 04.

(e) DORM or its agent may direct an injured employee to specific medical providers, and shall monitor the progress of the injured employee to encourage and facilitate his/her return to work. The injured employee must cooperate with DORM or its agent; failure to cooperate will result in termination of benefits.

(f) All of an employee's medical costs which are directly attributable to injuries by an accident arising out of and in the course of employment will be paid by DORM or its agent.

(g) For the purposes or this article and Article 3 of this program, minors shall have the same power to contract, make settlements and receive compensation as adult employees.

(h) For fiscal year 1995-96 and thereafter, the Departments of Transportation and Public Safety will pay benefits through and will be subject to the SEICTF rules for injuries occurring on or after October 1, 1995.

(i) The employer and employee may settle all matters of benefits, whether involving compensation, medical payments, or rehabilitation, and all questions arising under this program between themselves, and every settlement shall be in amount the same as the amounts or benefits stipulated in these rules. No settlement for an amount less than the amounts or benefits stipulated in these rules shall be valid for any purpose, unless the Review Board determines that it is for the best interest of the employee or the employee's dependent to accept a lesser sum and approves the settlement. The Review Board shall not approve any settlement unless and until it has first made inquiry into the merits of a claimant's claim and the Review Board may hold a hearing thereon.

(j) An agency, department, board or commission may, with the approval of the Risk Manager and upon payment of the assessed costs, elect to cover employees as defined by this program subject to the following limitation: SEICTF wage replacement benefits, defined in this program as "compensation," paid to a contract employee, combined with salary payments made to the contract employee pursuant to the contract, may not exceed the total amount payable to the contract employee under the terms of the employment contract.

Author: P. Maddock

Statutory Authority: Code of Ala. 1975, §§36-29A-1, et seq.

History: **New Rule:** Filed September 30, 1994; effective November 4, 1994. **Amended:** Filed June 6, 1995; effective July 11, 1995. **Amended:** Filed October 30, 1995 effective December 4, 1995. **Amended:** Filed September 12, 1997; effective October 17, 1997. **Amended:** Filed March 23, 1998; effective April 27, 1998.

355-8-1-.04 Compensation Schedule.

(a) Compensation schedule. - Following is the schedule of compensation:

(1) Temporary Total Disability. - For injury producing temporary total disability, the compensation shall be 66 2/3 percent of the weekly earnings received at the time of injury, subject to a maximum and minimum weekly compensation as stated in Rule .04(n), but if at the time of injury the employee received weekly earnings of less than the minimum stated in Rule .04(n), then he or she shall receive the full amount of the weekly earnings per week. This compensation shall be paid during the time of the disability, but at the time as a temporary total disability shall become permanent, compensation for the continued total disability shall be governed by (a)(4) of these rules with respect to permanent total disability. Payments are to be made at the intervals when the earnings were payable, as nearly as may be, unless the parties otherwise agree.

(2) Temporary Partial Disability.

a. Amount and Duration of Compensation. - For temporary partial disability, the compensation shall be 66 2/3 percent of the difference between the weekly earnings of the worker at the time of the injury and the weekly earnings he or she is able to earn in his or her partially disabled condition. This compensation shall be paid during the period of the disability, but not beyond 300 weeks. Payments shall be made at the intervals when the earnings were payable, as nearly as may be, unless the parties otherwise agree, and shall be subject to the same maximum weekly compensation as stated in Rule .04(n).

b. Effect of Change in Employment. - If the injured employee who is receiving compensation for temporary partial disability leaves the employment of the employer by whom he or she was employed at the time of the accident for which the compensation is being paid, he or she shall, upon securing employment elsewhere, give to the former employer an affidavit in writing containing the name of his or her new employer, the place of employment, and the amount of wages being received at the

new employment, and until he or she gives the affidavit, the compensation for temporary partial disability shall cease. The employer for whom the employee was employed at the time of the accident for which the compensation is being paid may also at any time demand of the employee an additional affidavit, in writing, containing the name of his or her employer, the place of his or her employment, and the amount of wages he or she is receiving; and if the employee upon demand fails or refuses to make and furnish the affidavit, his or her right to compensation for temporary partial disability shall cease until the affidavit is made and furnished.

(3) Permanent Partial Disability.

a. Amount and Duration of Compensation. - For permanent partial disability, the compensation shall be based upon the extent of the disability. In cases included in the following schedule, the compensation shall be 66 2/3 percent of the weekly earnings, during the number of weeks set out in the following schedule:

1. For the loss of a thumb, 62 weeks.

2. For the loss of a first finger, commonly called the index finger, 43 weeks.

3. For the loss of the second finger, 31 weeks.

4. For the loss of the third finger, 22 weeks.

5. For the loss of a fourth finger, commonly called the little finger, 16 weeks.

6. The loss of the first phalange of the thumb or of any finger shall be considered as equal to the loss of the one half of the thumb or finger, and compensation shall be paid at the prescribed rate during one half of the time specified above for the thumb or finger.

7. The loss of two or more phalanges shall be considered as the loss of the entire finger or thumb, but in no case shall be the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

8. For the loss of a great toe, 32 weeks.

9. For the loss of any of the toes other than the great toe, 11 weeks.

10. The loss of the first phalange of any tow shall be considered to be equal to the loss of one half of the toe, and compensation shall be paid at the prescribed rate during one half the time prescribed above for the toe.

11. The loss of two or more phalanges shall be considered as the loss of an entire toe.

12. For the loss of a hand, 170 weeks.

13. For the loss of an arm, 222 weeks.

14. For the loss of a foot, 139 weeks.

15. Amputation between the elbow and wrist shall be considered as the equivalent to the loss of a hand, and amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot.

16. For the loss of a leg, 200 weeks.

17. For the loss of an eye, 124 weeks.

18. For the complete and permanent loss of hearing in both ears, 163 weeks.

19. For the complete and permanent loss of hearing in one ear, 53 weeks.

20. For the loss of an eye and a leg, 350 weeks.

21. For the loss of an eye and one arm, 350 weeks.

22. For the loss of an eye and a hand, 325 weeks.

23. For the loss of an eye and a foot, 300 weeks.

24. For the loss of two arms, other than at the shoulder, 400 weeks.

25. For the loss of two hands, 400 weeks.

26. For the loss of two legs, 400 weeks.

27. For the loss of two feet, 400 weeks.

28. For the loss of one arm and the other hand, 400 weeks.

29. For the loss of one hand and one foot, 400 weeks.

30. For the loss of one leg and the other foot, 400 weeks.

31. For the loss of one hand and one leg, 400 weeks.

32. For the loss of one arm and one foot, 400 weeks.

33. For the loss of one arm and one leg, 400 weeks.

34. For serious disfigurement, not resulting from the loss of a member or other injury specifically compensated, materially affecting the employability of the injured person in the employment in which he or she was injured or other employment for which he or she is then qualified, 66 2/3 percent of the weekly earnings for the period as the Review Board may determine, but not exceeding 100 weeks.

b. Successive or Concurrent Temporary Total and Permanent Partial Disabilities Resulting from Same Injury. - When a permanent partial disability, the number of weeks compensation for which is scheduled in subdivision (a)(3) of this rule, follows or accompanies a period of temporary total disability resulting from the same injury, the number of weeks of the temporary total disability shall not be deducted from the number of weeks payable for the permanent partial disability.

c. Concurrent Disabilities. - If an employee sustains concurrent injuries resulting in concurrent disabilities, he or she shall receive compensation only for the injury which entitled him or her to the largest amount of compensation, but this paragraph shall not affect liability for the concurrent loss of more than one member for which members compensation is provided in the specific schedule.

d. Loss of Use of Member. - The permanent and total loss of the use of a member shall be considered as equivalent to the loss of that member, but in such cases the compensation specified in the schedule for such injury shall be in lieu of all other compensation, except as otherwise provided herein. For permanent disability due to injury to a member resulting in less than total loss of use of the member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss or total loss of use of the respective member which the extent of the injury to the member bears to its total loss.

e. Effect of Refusal of Suitable Employment. - If an injured employee refuses employment suitable to his or

her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation at any time during the continuance of the refusal, unless at any time, in the opinion of the Review Board, the refusal is justifiable.

f. Maximum and Minimum Compensation Award. - Compensation provided in this subsection (a) for loss of members or loss of use of members is subject to the same limitations as to maximum and minimum weekly compensation as stated in Rule .04(n).

g. Compensation for Permanent Partial Disabilities Not Enumerated. - For all other permanent partial disabilities not above enumerated, the compensation shall be 66 2/3 percent of the difference between the weekly earnings of the worker at the time of the injury and the weekly earnings he or she is able to earn in his or her partially disabled condition, subject to the same maximum weekly compensation as stated in Rule .04(n). If a permanent partial disability, compensation for which is not calculated by use of the schedule in subdivision (a)(3) of this rule, follows a period of temporary total disability resulting from the same injury, the number of weeks of the temporary total disability shall be deducted from the number of weeks payable for the permanent partial disability. Compensation shall continue during disability, but not beyond 300 weeks. The following formula shall be used to determine the compensation rate for injuries subject to this section: current weekly wage times the percent of disability times two thirds.

h. Affidavit of New Employment. - If the injured employee leaves the services of the employer for whom he or she was working at the time of the accident and accepts employment elsewhere, he or she shall make and furnish affidavit as to his or her new employment in the manner as required in (a)(2) of this rule.

i. Return to Work. - If, on or after the date of maximum medical improvement, except for scheduled injuries as provided in Rule .04(a)(3), an injured worker returns to work at a wage equal to or greater than the worker's pre-injury wage, the worker's permanent partial disability rating shall be equal to his or her physical impairment and the program shall not consider any evidence of vocational disability. Notwithstanding the foregoing, if the employee has lost his or her employment under circumstances other than any of the following within a period of time not to exceed 300 weeks from the date of injury, an employee may petition the Review Board within two years thereof for reconsideration of his or her permanent partial disability rating:

(i) The loss of employment is due to a labor dispute still in active progress in the establishment in which he or she is or was last employed. For the purpose of this section only, the term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of person in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. This definition shall not relate to a dispute between an individual worker and his or her employer.

(ii) The loss of employment is voluntary, without good cause connected with such work.

(iii) The loss of employment is for a dishonest or criminal act committed in connection with his or her work, for sabotage, or an act endangering the safety of others.

(iv) The loss of employment is for actual or threatened misconduct committed in connection with his or her work after previous warning to the employee.

(v) The loss of employment is because a license, certificate, permit, bond, or surety which is necessary for the performance of such employment and which he or she is responsible to supply has been revoked, suspended, or otherwise become lost to him or her for a cause.

The burden of proof is on the employer to prove, by clear and convincing evidence, that an employee's loss of employment was due to one of the causes (i) through (v) above. At the hearing, the Review Board may consider evidence as to the earnings the employee is or may be able to earn in his or her partially disabled condition, and may consider any evidence of vocational disability. The fact the employee had returned to work prior to his or her loss of employment shall not constitute a presumption of no vocational impairment. In making this evaluation, the Review Board shall consider the permanent restriction, if any, imposed by the treating physician under Rule .04(p), as well as all available reasonable accommodations that would enable the employee in his or her condition following the accident or onset of occupational disease to perform jobs that he or she in that condition otherwise would be unable to perform, and shall treat an employee

able to perform with such accommodation as though he or she could perform without the accommodation.

(4) Permanent Total Disability.

a. Amount, Duration, and Payment of Compensation. - For permanent total disability, as defined in paragraph d. of this subdivision, the employee shall receive 66 2/3 percent of the weekly earnings received at the time of the injury, subject to a maximum and minimum weekly compensation as stated in Rule .04(n). Notwithstanding the foregoing, if at the time of injury the employee was receiving earnings of less than the minimum as stated in Rule .04(n), then he or she shall receive the full amount of his or her earnings per week. This compensation shall be paid during the permanent total disability, as defined in paragraph d. of this subdivision. Payment of the compensation shall be made at the intervals when the earnings were payable, as nearly as may be, unless the parties otherwise agree. The payments, with the approval of the Review Board or by the agreement of the parties, may be made monthly, quarterly, or otherwise as the parties may agree. Payments for permanent total disability shall not be ordered to be paid in a lump sum without the consent of both the employer and the employee.

b. Alteration, Amendment, or Revision of Compensation. - At any time, the employer may petition the Review Board to alter, amend, or revise the award or approval of the compensation on the ground that as a result of physical or vocational rehabilitation, or otherwise, the disability from which the employee suffers is no longer a permanent total disability and, if the Review Board is so satisfied after a hearing, it shall alter, amend, or revise the award accordingly. If compensation for permanent total disability is being paid pursuant to a written agreement between employer and employee without approval, the employer may make application to the Review Board to alter, amend, or revise the agreement on such grounds. If an employee is receiving benefits for permanent total disability other than as a result of an award or a written agreement between the employer and employee and if the employer terminates the payment of the benefits, the employee may, within two years of the last payment, petition the Review Board to reinstate the benefits and, upon a showing that the permanent total disability still exists, shall be entitled to have the benefits reinstated effective the date of the last payment.

c. Employees in Public Institutions. - In case an employee who is permanently and totally disabled becomes

an inmate of a public institution, no compensation shall be payable unless the employee has wholly dependent on him or her for support a person or persons named in Rule .04(g) and (h), whose dependency shall be determined as if the employee were deceased, in which case the compensation provided for in this subdivision shall be paid for the benefit of the person so dependent, during dependency, in the manner so ordered by the court, while the employee is an inmate in the institution. Nothing contained herein shall be construed to deprive a permanently and totally disabled employee who has no dependent named in Rule .04(g) and (h) from receiving benefits to which he or she would otherwise be entitled if the employee, although an inmate of a public institution, is paying or on whose behalf funds are paid from any source to the public institution the normal and customary charge for the services rendered by the public institution. Normal and customary charge shall mean that charge actually made by the public institution to persons able to pay for the services rendered them whether the charge actually covers the expense of the upkeep of the inmate or not. If the employee has had a guardian appointed by a court of competent jurisdiction, the employee injury compensation payments shall be directly paid to the guardian.

d. Definition. - The total and permanent loss of the sight of both eyes or the loss of both arms at the shoulder or any physical injury or mental impairment resulting from an accident, which injury or impairment permanently and totally incapacitates the employee from working at and being retrained for gainful employment, shall constitute prima facie evidence of permanent total disability and shall constitute the sole basis on which an award of permanent total disability may be based. Any employee whose disability results from an injury or impairment and who shall have refused to undergo physical or vocational rehabilitation or to accept reasonable accommodation shall not be deemed permanently and totally disabled.

e. Second Permanent Injuries Generally. - If an employee has a permanent disability or has previously sustained another injury than that in which the employee received a subsequent permanent injury by accident, as is specified in this section defining permanent injury, the employee shall be entitled to compensation only for the degree of injury that would have resulted from the latter accident if the earlier disability or injury had not existed.

f. Second Permanent Injury in Same Employment Resulting in Permanent Total Disability. - If an employee receives a permanent injury as specified in this section after

having sustained another permanent injury in the same employment, and if the previous and subsequent injuries result in permanent total disability, compensation shall be payable for permanent total disability only.

g. Concurrent Compensation Payments. - If an employee receives an injury for which compensation is payable while he or she is still receiving or entitled to receive compensation for a previous injury in the same employment, he or she shall not at the same time be entitled to compensation for both injuries, unless the later injury is a permanent injury, as specified in this section, but he or she shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this article and Articles 3 and 4 of this program.

h. If an employee receives a permanent injury as specified in this section, after having sustained another permanent injury in the same employment, he or she shall be entitled to compensation for both injuries, subject to paragraph e. of this subdivision, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation, and in no case for permanent partial disability exceeding 700 weeks.

i. Effect of Rehabilitation or Recovery on Permanent Total Disability Benefits. - If an employee who is receiving benefits for permanent total disability shall, as a result of physical or vocational rehabilitation or otherwise, obtain gainful employment, the obligation to pay permanent total disability benefits shall thereupon terminate; provided, that at any time that the employee's weekly wage from the employment shall be less than the employee's weekly wage at the time of injury, the employer shall remain obligated to pay to the employee as compensation an amount equal to 66 2/3 percent of the difference, subject to each of the following limitations:

1. The employer's liability for the payment of 66 2/3 percent of the difference shall continue for 200 weeks from the date of reemployment or 300 weeks from the date of injury, whichever is the longer period.

2. In no event shall the amount of weekly benefits paid by the employer to the employee exceed the weekly benefit the employee was receiving for permanent total disability.

3. No payments shall be due for any week the employee earns as much as or more than his or her average

weekly wage at the time of injury. If the employee who obtains gainful employment suffered a permanent partial disability as specified in subsection (a), subdivision (3) of this rule, the total amount of compensation paid for permanent total disability shall not be less than that amount which would have been payable for the permanent partial disability.

j. Affidavit of Gainful Employment. - If an employee who is receiving benefits for permanent total disability shall, as the result of physical or vocational rehabilitation, accommodation, or otherwise, obtain gainful employment with an employer other than with his or her former employer, he or she shall, upon securing employment, give to his or her former employer an affidavit in writing containing the name of his or her new employer, the place of employment and the amount of wages being received at the new employment. Until he or she gives the affidavit, the compensation for permanent total disability shall cease. The employer for whom the employee was employed at the time of the accident for which compensation is being paid may also at any time demand of the employee additional affidavit, in writing, containing the name of his or her employer, the place of his or her employment, and the amount of wages he or she is receiving. If the employee, upon demand, fails or refuses to make and furnish the affidavit, his or her rights to compensation shall cease until the affidavit is made and furnished.

(5) Death Following Disability. - If an employee sustains an injury occasioned by an accident arising out of and in the course of his or her employment and, during the period of disability caused thereby, death results proximately therefrom, all payments previously made as compensation for the injury shall be deducted from the compensation, if any, due on account of death. If an employee who sustains a permanent partial or permanent total disability, the degree of which has been agreed upon by the parties or has been ascertained by the Review Board, and death results not proximately therefrom, the employee's surviving spouse or dependent children or both shall be entitled to the balance of the payments which would have been due and payable to the worker, whether or not the decedent employee was receiving compensation for permanent total disability, not exceeding, however, the amount that would have been due the surviving spouse or dependent children or both if death had resulted proximately from an injury on account of which compensation is being paid to an employee.

(6) Hernia.

a. Proof - For hernia resulting from injury by an accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the court all of the following:

1. That there was an injury resulting in hernia.

2. That the hernia appeared suddenly.

3. That it was accompanied by pain.

4. That the hernia immediately followed an accident.

5. That the hernia did not exist prior to the accident for which compensation is claimed.

b. Treatment. - All hernia, inguinal, femoral, or otherwise, proved to be the result of an injury by accident arising out of and in the course of the employment, shall be treated in a surgical manner by radical operation. If the injured employee refuses to undergo the radical operation for the cure of the hernia, no compensation will be allowed during the time the refusal continues. If, however, it is shown that the employee has some chronic disease or is otherwise in physical condition that the Review Board considers it unsafe for the employee to undergo the operation, the employee shall be paid as otherwise provided herein.

(b) Computation of compensation; determination of weekly earnings. - Compensation under this section shall be computed on the basis of the wages of the injured employee in the employment in which he or she was working at the time of the injury.

(c) Setoff for other recovery. - In calculating the amount of employee injury compensation due:

(1) The employer may reduce the compensation paid under this program by the amount of benefits paid or due to be paid to the employee pursuant to a disability plan, retirement plan, or other plan providing for sick pay, if an only if the employer provided the benefits or paid for the plan or plans providing the benefits deducted.

(2) The employee shall forfeit to the employer all compensation paid for any period to which is attributed any award of back pay either by a court, administrative agency, arbitration, or settlement, provided, however, social security payments shall not be included herein.

(3) If an employer continues the salary of an injured employee during the benefit period or pays similar compensation during the benefit period, the employer shall be allowed a setoff in

weeks against the compensation owed under this rule. For the purposes of this section, voluntary contributions to a Section 125-cafeteria plan for a disability or sick pay program shall not be considered as being provided by the employer.

(d) Effect of preexisting injuries or infirmities. - If the degree or duration of disability resulting from an accident is increased or prolonged because of a preexisting injury or infirmity, the employer shall be liable only for the disability that would have resulted from the accident had the earlier injury or infirmity not existed.

(e) Waiting period for compensation:

(1) For purposes of this rule, except for scheduled injuries as provided in Rule .04(a)(3), compensation for the first three days of disability shall not be payable, nor shall compensation be paid in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in Rule .04(q).

(2) Compensation shall begin with the fourth work day after disability, and if the disability from the injury exists for a period as much as 21 calendar days, compensation for the first three work days after the injury shall be added to and payable with the first installment due the employee after the expiration of the 21 calendar days.

(3) If the injury occurs during the first half of the employee's workday and the employee is unable to return to work and misses the remainder of the workday due to the injury, the day of the accident shall be considered the first day of disability. If an injury occurs during the second half of an employee's workday, and the employee is unable to return to work and misses the remainder of the workday due to the injury, the next scheduled workday missed due to the injury following the date of the accident shall be considered the first day of disability.

(f) Compensation for death. - In death cases, where the death results proximately from the accident within three years, compensation payable to dependents shall be computed on the following basis and shall be paid to the persons entitled thereto without administration, or to a guardian or other person as the Review Board may direct, for the use and benefit of the person entitled thereto.

(1) Persons Entitled to Benefits; Amount of Benefits.

a. If the deceased employee leaves one dependent, there shall be paid to the dependent 50 percent of the weekly earnings of the deceased.

b. If the deceased employee leaves two or more dependents, there shall be paid to the dependents 66 2/3 percent of the weekly earnings of the deceased.

c. If one of two or more dependents is a widow or widower, the compensation may be paid to the widow or widower for the benefit of herself or himself and the dependent child or children.

d. Partial dependents shall be entitled to receive only that proportion of the benefits provided for total dependents which the average amount of the earnings regularly contributed by the deceased employee to the partial dependent, at and for a reasonable time immediately prior to the injury, bore to the total income of the dependent during the same time. If there is one dependent and one or more partial dependents and the dependent is not entitled to the maximum amount of compensation provided in Rule .04(n), there shall be paid to the partial dependent or partial dependents that percentage of the benefit paid to a full dependent which the contribution of the decedent to the partial dependent's support bears to the total income of the partial dependent. Notwithstanding the foregoing, the compensation payable to the partial dependent or dependents shall not exceed the lesser of 16 2/3 percent of the decedent's weekly wage or the difference between the compensation payable to the full dependent and the maximum weekly compensation benefit payable as provided in Rule .04(n).

e. If compensation is being paid under this rule to any dependent, the compensation shall cease upon the death or marriage of the dependent, unless otherwise provided in this rule.

f. Upon the cessation of compensation to or for any dependent, for any cause, the compensation of the remaining dependents entitled to compensation shall, for the unexpired period during which their compensation is payable, be that which would have been payable to them had they been the only persons entitled to compensation at the time of death of the deceased employee.

(2) Maximum and Minimum Compensation Awards. - The compensation payable in case of death to persons wholly dependent shall be subject to a maximum and minimum weekly compensation as stated in Rule .04(n), but if at the time of injury the employee receives earnings of less than the minimum stated in Rule .04(n) the compensation shall be the full amount of such earnings per week. The compensation payable to partial dependents shall be subject to a maximum and minimum weekly compensation as stated in Rule .04(n), but if the

income loss of the partial dependents by the death is less than the minimum weekly compensation stated in Rule .04(n), then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency, not exceeding 500 weeks. Payments shall be made at the intervals when the earnings were payable, as nearly as may be, unless the parties otherwise agree.

(g) Persons presumed wholly dependent. - For the purposes of this rule, the following described persons shall be conclusively presumed to be wholly dependent:

(1) The wife, unless it is shown that she was voluntarily living apart from her husband at the time of his injury or death, or unless it is shown that the husband was not in any way contributing to her support and had not in any way contributed to her support for more than 12 months next preceding the occurrence of the injury causing his death;

(2) The husband, unless it is shown that he was voluntarily living apart from his wife at the time of her injury or death, or unless it is shown that the wife was not in any way contributing to his support and had not in any way contributed to his support for more than 12 months next preceding the occurrence of the injury causing her death; and

(3) Minor children under the age of 18 and those over 18, if physically or mentally incapacitated from earning.

(h) Total dependents. - A wife, child, husband, mother, father, grandmother, grandfather, sister, brother, mother-in-1aw or father-in-1aw who was wholly supported by the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his total dependents, and payment of compensation shall be made to such total dependents in the order named.

(i) Total dependents - Maximum compensation. - Total dependents shall be entitled to take compensation in the order named in Rule .04(h) until the percentage of the average weekly earnings of the deceased, during the time and as specified in Rule .04(f), shall have been exhausted; but the total compensation to be paid to all total dependents of a deceased employee shall not exceed in the aggregate the maximum weekly compensation stated in Rule .04(n), except as otherwise provided in this rule.

(j) Partial dependents. - Any member of a class named in Rule .04(h) who regularly derived part of his support from the earnings of the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his partial dependent, and payment of compensation shall be made to such partial dependents in the order named.

(k) Orphans or other children. - In computing and paying compensation to orphans or other children, in all cases, only those under 18 years of age or those over 18 years of age who are physically or mentally incapacitated from earning shall be included; the former to receive compensation only during the time they are under 18, the latter for the time they are so incapacitated, within the applicable period for which benefits are payable.

(l) Remarriage of widow of employee who has another dependent. - In case of the remarriage of a widow of an employee who has another dependent, the unpaid balance of compensation, which would otherwise become due her, shall be paid to the dependent or may, on approval by the Review Board, be paid to some suitable person designated by the Review Board for the use and benefit of the dependent. Payment to that person shall discharge the employer from any further liability.

(m) Burial expenses. - If death results to an employee as the result of an accident or an occupational disease arising out of and in the course of the employment, the employer shall pay, in addition to the medical and hospital expenses provided for in Rule .04(p), the expenses of burial, not exceeding in amount of $5,000,00. If a dispute arises as to the reasonable value of the services rendered in connection with the burial, the same shall be approved by the Review Board before payment after reasonable notice to interested parties as the Review Board may require.

(n) Maximum and minimum weekly compensation.

(1) The compensation paid under this article shall be not less than, except as otherwise provided in this rule, 27 1/2 percent of the weekly wage of the state as determined by the Director of Industrial Relations, rounded to the nearest dollar and, in any event, no more than 100 percent of the weekly wage. Notwithstanding the foregoing, the maximum compensation payable for permanent partial disability shall be no more than the lesser of $220.00 per week or 100 percent of the weekly wage.

(2) In no event, except as provided for permanent total disability in subdivision (a)(4) of Rule .04 or accept for compensation benefits payable for permanent partial and temporary total disability in connection with a disability scheduled in subdivisions (1) and (3) of subsection (a) of Rule .04, shall the total amount of compensation payable for an accident or an occupational disease exceed the product of 500 times the maximum weekly benefit applicable on the date of the accident.

(3) The minimum and maximum benefits that are in effect on the date of the accident which results in injury or death shall be

applicable for the full period during which compensation is payable.

(o) Death or marriage of dependent. - If compensation is being paid under this rule to any dependent, such compensation shall cease upon the death or marriage of such dependent. Where compensation is being paid under this chapter to any dependent, in no event shall such dependent receive more than the proportion of which the amount received of the deceased employee's income during his life bears to the compensation provided under this rule.

(p) Expense of Treatment.

(1) In addition to the compensation provided in this rule and Articles 3 and 4 of this program the employer, where applicable, shall pay the actual cost of the repair, refitting, or replacement of artificial members damaged as the result of an accident arising out of and in the course of employment, and the employer, except as otherwise provided in this program shall pay an amount not to exceed the prevailing rate or maximum schedule of fees as established herein of reasonably necessary medical and surgical treatment and attention, physical rehabilitation, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus as the result of an accident arising out of and in the course of the employment, as may be obtained by the injured employee or, in case of death, obtained during the period occurring between the time of the injury and the employee's death therefrom. “Necessary medical and surgical” shall mean medically necessary services or supplies which are determined under this program to be: appropriate and necessary for the symptoms, diagnosis or treatment of the condition; within standards of practice within the organized medical community in the United States; not primarily for the convenience of the employee, the employee’s physician or clinician or other provider; and administered with the appropriate frequency, quantity, duration and level of service. If the employee is dissatisfied with the initial treating physician selected by the employer and if further treatment is required, the employee may so advise the employer, and the employee shall be entitled to select a second physician from a panel or list of four physicians selected by the employer. If surgery is required and if the employee is dissatisfied with the designated surgeon, he or she may so advise the employer, and the employee shall be entitled to select a second surgeon from a panel or list of four surgeons selected by the employer. If four physicians or surgeons are not available to be listed, the employer shall include on the list as many as are available. The four physicians or surgeons selected by the employer hereunder shall not be from or members of the same firm, partnership, or professional corporation. The total liability of the employer shall, unless otherwise provided in this chapter, not exceed

the prevailing rate or the maximum schedule of fees as established herein. Notwithstanding the foregoing, in ascertaining the prevailing rate of reimbursement or payment with regard to participating hospitals and ambulatory surgical centers or outpatient rehabilitation centers licensed by the State of Alabama, as well as diagnostic facilities accredited by the Commission on Accreditation of Rehabilitation Facilities, the prevailing rate shall be negotiated with each individual hospital, ambulatory surgical center, licensed outpatient rehabilitation facility, or diagnostic facility based on that institution's treatment of comparable type cases for the 12-month period immediately preceding August 1, 1992. These rates shall be updated every 12 months thereafter. Initial rates shall be established within six months of August 1, 1992. For those non-participating hospitals the prevailing rate shall be that rate determined by a committee as provided in the Alabama Workers Compensation Law. Notwithstanding any other provisions of this section to the contrary, DORM or its agent may enter into agreements with the State Employees Insurance Board, or physician, hospitals, and other health care providers for the provision of medical services to injured workers at any rates, fees or levels of reimbursement which shall be mutually agreed upon. If an insurer of the employee or a benefit association has paid or is liable for the employee's medical, surgical, and hospital service or for a part thereof, or if the employee is entitled to the same or a part thereof, from any source whatever by virtue of any agreement or understanding or law, state or federal, without any loss of benefit to the employee, the employer shall not be required to pay any part of the expense. If the benefits are insufficient to pay all the employee's expense, the employer shall be liable for the deficiency only. All cases of dispute as to the necessity and value of the services shall be determined by the Review Board.

(2) If requested to do so by the employer, the injured employee shall submit to examination by the employer's physician at all reasonable times, but the employee shall have the right to have a physician of his or her own selection present at the examination, in which case the employee shall be liable to the physician of his or her own selection for his or her services. The employer shall pay for the services of the physician making the examination at the instance of the employer. If a dispute arises as to the injury, or as to the extent of the disability therefrom, the Review Board may, at the instance of either party or of its own motion, appoint a neutral physician of good standing and ability to make an examination of the injured employee and to report his or her findings to the Review Board the expense of which examination shall be borne equally by the parties. If the injured employee refuses to comply with reasonable request for examination, or refuses to accept the medical service or physical rehabilitation, which the employer elects to furnish under

this program, the employee's right to benefits shall be terminated.

(3) If the employer so elects, the employee shall submit to and undergo vocational rehabilitation at the employer's expense through a vocational rehabilitation specialist, who shall be qualified to render competent vocational rehabilitation service. If an employee who is unable in the opinion of the treating physician to return to his or her former employment shall request vocational rehabilitation and if both a vocational rehabilitation specialist and a treating physician, the cost of whose service is the obligation of the employer under this section, shall express their opinions in writing that in the judgment of each of them vocational rehabilitation is reasonably calculated to restore the employee to gainful employment and is in the best interest of the employee, the cost of the rehabilitation shall be borne by the employer. The cost, where rehabilitation requires residence at or near a facility or institution away from the employee's customary residence, shall include reasonable charges for the employee's necessary board, lodging and travel.

(4) If an employee refuses, without the consent of the Review Board to accept vocational rehabilitation at the employer's request, the refusal shall result in loss of compensation for the period of refusal.

(5) All disputes with regard to vocational rehabilitation may be submitted to the Review Board for resolution.

(6) The employer shall pay mileage costs to and from medical and rehabilitation providers which are outside of a 25 mile radius of the employee's home at the same rate as provided by law for official state travel.

(7) In a compensable employee injury compensation claim, the injured employee shall not be liable for payment of any authorized and compensable medical expenses associated with the employer injury compensation claim.

(q) Notice to employer of accident - Required. - For purposes of this article only, an injured employee or the employee's representative, within five days after the occurrence of an accident, shall give or cause to be given to the employer notice of the accident in the form provided by the employer. If the notice is not given, the employee or the employee's dependent shall not be entitled to physician's or medical fees nor any benefits which may have accrued under the terms of this article, unless it can be shown that the party required to give the notice had been prevented from doing so by reason of physical or mental incapacity, other than minority, fraud or deceit, or equal good reason. Notwithstanding any other provision of this section, no

benefits shall be payable unless written notice is given within 90 days after the occurrence of the accident or, if death results, within 90 days after the death.

(r) Limitation period for claims for compensation. - In case of a personal injury not involving cumulative physical stress, all claims for benefits under this program shall be forever barred unless within two years after the accident the employee shall have notified the employer of his claim for benefits arising out of a reported accident. In cases involving personal injury due to cumulative physical stress, benefits under this article shall be forever barred unless within two years after the date of the injury the employee shall have notified the employer of his claim for benefits arising out of a reported accident. In cases involving claims for lost earning capacity under Rule .04(a)(3)(i), other than those involving cumulative physical stress, following termination of employment as outlined therein, benefits shall be forever barred unless a claim is made to the employer within two years of the termination. In case of death, all claims for benefits shall be forever barred unless within two years after death, when the death results proximately from the accident within three years, employee's representative shall have notified the employer of a claim for benefits. Where, however, payments of compensation, or medical or vocational payments, have been made in any case, the period of limitation for filing a claim with the employer shall not begin to run until the time of making the last payment. In case of physical or mental incapacity, other than the minority of the injured person or his or her dependents, to perform or cause to be performed any act required within the time in this section specified, the period of limitation for filing a claim with the employer in any case shall be extended to become effective two years from the date when the incapacity ceases.

(s) Compensation for death to be paid only to United States residents. - Compensation for the death of an employee shall be paid only to dependents who, at the time of the death of the injured employee, were actually residents of the United States. No entitlement to compensation from the employer for the death of an employee shall exist in favor or for the benefit of any person who was not a resident of the United States at the time of the death of such employee.

(t) Commutation of compensation to lump sum payments. - By agreement of the parties and with approval of the Review Board, the amounts of compensation payable periodically, under this rule and Article 3 may be commuted to one or more lump sum payments. No commutation shall be approved by the Review Board unless the Review Board is satisfied that it is in the best interest of the employee or the employee's dependent, in case of death, to receive the compensation in a lump sum rather than in periodic payments. In making the commutations, the lump sum payment shall, in the aggregate, amount to a sum equal to the present value of all

future installments of compensation calculated on a six percent basis.

(u) Modification of payments. - All amounts paid by the employer and received by the employee or his dependents under settlements made under Rule .04(i) shall be final, but the amount of any award payable periodically for more than six months may be modified at any time by agreement of the parties and approved by the Review Board.

(v) Procedure for and effect of payment of compensation to appointed trustee. - At any time after the amount of an award has been agreed upon by the parties or found and ordered by the Review Board, a sum equal to the present value of all future installments of compensation calculated on a six percent basis may, where death or the nature of the injury renders the amount of future payments certain, by leave of the Review Board, be paid by the employer to a bank or trust company of this state or a national bank doing business in this state to be approved and designated by the Review Board, and the sum, together with all interest thereon, shall thereafter be held in trust for the employee or dependent of the employee, who shall have no further recourse against the employer. The payment of the sum by the employer, evidence by the receipts in duplicate of the trustees, one of which shall be filed with the probate judge of the county in which the injury or death occurred and the other filed with the Review Board, shall operate as a satisfaction of the award as to the employer, and the trustee designated by the Review Board shall be allowed to pay itself from the fund a reasonable compensation for acting as the trustee, which compensation shall be fixed by the Review Board in the order making the designation. Payments from the fund shall be made by the trustee in the same amounts and at the same time as are required in this article of the employer until the fund, after deducting the trustee's compensation as above provided, and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the Review Board, to the choice of the injured employee or the dependent of the deceased employee. If the right to receive compensation should terminate on account of death, becoming of age, or marriage, or for any other cause as provided in this article, the balance remaining in the bank or trust company after the termination should be returned by them to the employer, his or her successor, or assigns.

(w) Determination of disputed benefits. - In case of a dispute between employer and employee or between dependents of a deceased employee and the employer with respect to the right to benefits, or the amount thereof, the employee may submit the controversy to the Employee Injury Compensation Program Review Board. The request for review by the Review Board must be in writing and directed to the Risk Manager, must describe with particularity the issue or issues in dispute, and must be received by the Review Board no later than sixty (60) days from the date on which the employee was

notified of the disputed decision. The Review Board after conducting a hearing, if appropriate, will determine the controversy and the decision will be binding, subject to review, upon appeal by the employee, by the circuit court in Montgomery County in the manner prescribed by the Administrative Procedures Act. The decision of the Review Board shall be based on a preponderance of the evidence as contained in the record of the hearing, except in cases involving injuries which have resulted from gradual deterioration or cumulative physical stress disorders, which shall be deemed compensable only upon a finding of clear and convincing proof that those injuries arose out of and in the course of the employee's employment. "Clear and convincing" shall mean evidence that, when weighted against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt.
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355-8-1-.05 Compensation For Occupational Diseases.

(a) For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section:

(1) Occupational Disease. A disease arising out of and in the course of employment, including occupational pneumoconiosis and occupational exposure to radiation as defined in subdivisions (2) and (3), respectively, of the section, which is due to hazards in excess of those ordinarily incident to employment in general and is peculiar to the occupation in which the employee is engaged but without regard to negligence or fault, if any, of the employer. A disease, including, but not limited to, loss of hearing due to noise, shall be deemed an occupational disease only if caused by hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of exposure, over a period of time, to the normal working conditions of the trade, process, occupation, or employment.

(2) Occupational Pneumoconiosis. A disease of the lungs cause by inhalation of minute particles of dust over a period of time, which dust is due to causes and conditions arising out of and in the course of the employment, without regard to whether the causes or conditions are inherent in the

employment or can be eliminated or reduced by due care on the part of the employer. The term "occupational pneumoconiosis" shall include, but without limitation, such diseases as silicosis, siderosis, anthracosis, anthrasilicosis, anthracosilicosis, anthraco-tuberculosis, tuberculosilicosis, silico-tuberculosis, aluminosis, and other diseases of the lungs resulting from causes enumerated in this section.

(3) Occupational Exposure to Radiation. Gradual exposure to radiation over a period of time from the use of or direct contact with radium, radioactive substances, roentgen rays (X-rays), or ionizing radiation, arising out of and in the course of the employment and resulting from the nature of the employment and resulting from the nature of the employment in which the employee is engaged, without regard to whether the exposure is inherent in the employment or can be eliminated or reduced by due care on the part of the employer.

(4) Nature of Employment. With respect to subdivisions (2) and (3) above, this term shall mean that, as to the industry in which the employee is engaged, there is attached a particular hazard of the exposure that distinguishes it from the usual run of occupations and is in excess of the hazards of the exposure attending employment in general.

(5) Contraction of an Occupational Disease. The term shall include any aggravation of the disease without regard to the employment in which the disease was contracted.

(6) Date of Injury. The date of injury for an occupational disease except for pneumoconiosis and radiation shall be the first date of diagnosis.

(b) The disablement or death of an employee caused by the contraction of an occupational disease, as herein defined shall be treated as an injury by accident, and the employee or, in case of his death, his dependents shall be entitled to compensation as provided in this article. In no case, however, shall the employer be liable for compensation by reason of the contraction of an occupational disease, as herein defined or for disability or death resulting therefrom unless such disease arose out of and in the course of the employment and resulted from the nature of the employment in which the employee was engaged.

(c) No employee of the employer nor the personal representative, surviving spouse or next of kin of any such employee shall have any right to any other method, form or amount of compensation or damages for the contraction of an occupational disease, as defined in this article, or for injury, disability, loss of service or death resulting from such disease, arising out of and in the course of employment, or for the contraction of an occupational disease, as defined in this article, or for injury, disability, loss of service or death resulting from such disease, arising out

of and in the course of employment, or determination thereof, in any manner other than as provided in this article.

(d) If an employee, at the time of or in the course of entering into the employment of the employer by whom the compensation would otherwise be paid, willfully and falsely represented himself in writing to the employer as not having previously been compensated in damages, or under this article, because of occupational disease, as defined in this article, such employee, his personal representative, parents, surviving spouse, dependents and next of kin shall be barred from compensation or other benefits provided by this article on account of occupational disease as defined in this article, resulting from exposure to the hazards of such disease subsequent to such representation and while in the employ of the employer.

(e) A claim for compensation under this Article shall be brought within the time and manner prescribed in Rule .04(r) or it shall be forever barred.

(f) For purposes of pneumoconiosis and radiation, "the date of the injury" shall mean the date of the last exposure to the hazards of the disease in the employment of the employer in whose employment the employee was last exposed to the hazards of the disease in each of at least 12 months, within a period of five years prior to the date of the injury.

(g) The compensation payable for death or disability caused by an occupational disease shall be computed in the same manner and in the same amounts as provided in of this program for computing compensation for disability or death resulting from an accident arising out of and in the course of the employment. The date of injury shall be considered the date of the accident for determining the applicable medical, surgical and hospital benefits, the minimum and maximum weekly benefits and the limitation on the total amount of compensation payable for such occupational disease.

(h) There shall not be a presumption that disablement or death from any cause or infirmity is the result of an occupational disease, nor that an occupational disease will result in disablement or death, and any person claiming compensation or other benefits under this article shall have the burden of establishing that he or she is entitled to the benefits.

Author:

Statutory Authority: Code of Ala. 1975, §§36-29A-1, et seq.

History: New Rule: Filed September 30, 1994; effective November 4, 1994.

355-8-1-.06 Compensation For Occupational Exposure To Radiation.

(a) Definitions. For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section:

(1) Occupational Exposure to Radiation. Gradual exposure to radiation over a period of time from the use of or direct contact with radium, radioactive substances, roentgen rays (x-rays) or ionizing radiation, arising out of and in the course of the employment and resulting from the nature of the employment in which the employee is engaged, without regard to whether or not said exposure is inherent in the employment or can be eliminated or reduced by due care on the part of the employer.

(2) Nature of Employment. Such term shall mean that, as to the industry in which the employee is engaged, there is attached a particular hazard of such exposure that distinguishes it from the usual run of occupations and is in excess of the hazards of such exposure attending employment in general.

(b) The disablement or death of an employee cause by occupational exposure to radiation, as defined in this article, shall be treated as an injury by accident, and the employee or, in case of his death, his dependents shall be entitled to compensation as provided in this article. In no case, however, shall the employer be liable under this article for compensation by reason of exposure to radiation or for disability or death resulting therefrom, unless such exposure arose out of and in the course of the employment and resulted from the nature of the employment in which the employee was engaged.

(c) No employee of the employer nor the personal representative, surviving spouse or next of kin of any such employee shall have any right to any other method, form or amount of compensation or damages for occupational exposure to radiation, or for injury, disability, loss of service or death resulting from such exposure, arising out of and in the course of employment, or determination thereof, in any manner other than as provided in this article.

(d) If any employee, at the time of or in the course of entering into the employment of the employer by whom the compensation would otherwise be paid, willfully and falsely represented himself in writing to the employer as not having previously been disabled, laid off or compensated in damages, workers' compensation or otherwise, because of occupational exposure to radiation, or as not having previously been subject to occupational exposure to radiation, such employee, his personal representative, parents,

surviving spouse, dependents and next of kin shall be barred from compensation or other benefits provided by this article.

(e) In case of occupational exposure to radiation, as defined in this article, or of injury or disability resulting therefrom, all claims for compensation shall be forever barred, unless within one year after the employee first suffered disability therefrom and either knew or in the exercise of reasonable diligence should have known that the disability was caused therefrom, but in no event more than three years after date of the injury as hereinafter defined, the parties shall have agreed upon the compensation payable under this article, or unless within such period of time one of the parties shall have filed a claim for benefits under this program. In case of death, all claims for compensation shall be forever barred, unless the death results proximately form occupational exposure to radiation, as defined in this article, and occurs within three years of the date of the injury, as hereinafter defined, and unless within one year after such death the parties shall have agreed upon the compensation under this article, or unless within one year after such death one of the parties shall have filed a claim for benefits under this program provided, however, that if upon the date of the death of the employee the employee's claim is barred, any claim by or for his dependents shall like wise be barred. Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of one year from the time of making the last payment. In case of the mental incapacity of the injured employee or his dependents to perform or cause to be performed any act required within the time in this section specified, the period of limitation in any such case shall be extended to become effective one year from the date when such incapacity ceases. No agreement, express or implied, to shorten or to extend said limitations shall be valid or binding on either of the parties when said employment, at the time of said exposure, is or was subject to the provisions of this article. The "date of the injury" shall mean, for all purposes of this article, the date of the last exposure to the hazards of radiation in the employment of the employer in whose employment the employee was last exposed, within a period of five years prior to the date of the injury, to the hazards of radiation in each of at least 12 months.

(f) The compensation payable for death or disability caused by occupational exposure to radiation shall be computed in the same manner and in the same amounts as for computing compensation for disability or death resulting from an accident arising out of and in the course of the employment, and the medical, surgical, hospital and burial benefits payable under this article caused by said exposure shall be computed in the same manner and in the same amounts as for computing like benefits. The date of injury shall be considered the date of the accident for determining the applicable medical, surgical and hospital benefits, the minimum and maximum weekly benefits and the limitation on the total amount of compensation payable for occupational exposure to radiation.

(g) There shall be no presumption that disablement or death from any cause or infirmity is the result of occupational exposure to radiation nor that occupational exposure to radiation will result in disablement or death, and any person claiming compensation or other benefits under this article shall have the burden of establishing that he is entitled to such.

(h) The interested parties shall have the right to settle all matters of compensation and all questions arising under this article between themselves in accordance with and subject to the provisions of Rules .03 and .04, and in case of a dispute, either party may submit the controversy to the Review Board in accordance with and subject to the provisions of Rules .03 and .04.

Author:

Statutory Authority: Code of Ala. 1975, Act 94-680, Regular Session.

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