

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1268

Introduced by

Representative Berg

Senator Mutch

1 A BILL for an Act to amend and reenact sections 65-02-08 and 65-10-03 of the North Dakota
2 Century Code, relating to payment of attorney's fees paid for representing workers'
3 compensation claimants.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 65-02-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau.** The
8 bureau shall adopt rules necessary to carry out this title. All fees on claims for legal, medical,
9 and hospital services rendered under this title to an injured employee must be in accordance
10 with schedules of fees adopted by the bureau. Fee schedules for medical and hospital services
11 must incorporate cost-saving measures and must be submitted to and approved by the
12 committee on administrative rules before submission to the legislative council for publication.
13 The bureau shall establish, by administrative rule, costs payable, maximum costs, a reasonable
14 maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for
15 legal services following issuance of an administrative order ~~under chapter 28-32~~ reducing or
16 denying benefits. The bureau shall issue ~~an administrative order~~ a decision within sixty days of
17 the date when all elements of initial filing or notice of reapplication of claim have been satisfied
18 or a claim for additional benefits over and above benefits previously awarded has been made.
19 Satisfaction of elements of filing must be defined by administrative rule. The bureau shall pay
20 an injured employee's attorney's fees and costs from the bureau general fund. Except for an
21 initial determination of compensability, an attorney's fee may not exceed twenty percent of the
22 amount awarded, subject to a maximum fee set by administrative rule. The bureau shall pay an
23 attorney's fees and costs when:

1 1. The employee has prevailed in binding dispute resolution under section 65-02-20;

2 of.

3 2. The employee has prevailed after an administrative hearing under chapter 28-32.

4 An injured employee has prevailed only when an additional benefit, previously denied, is paid.

5 An injured employee does not prevail on a remand for further action or proceedings unless that

6 employee ultimately receives an additional benefit as a result of the remand. This section does

7 not prevent an injured employee or an employer from hiring or paying an attorney; however, the

8 employee's attorney may not seek or obtain costs or attorney's fees from both the bureau and

9 the employee relative to the same ~~services~~ claim. All disputes relating to payment or denial of

10 an attorney's fee or costs must be submitted to the hearing officer or arbitrator for decision, but

11 a hearing officer or arbitrator may not order that the maximum fee be exceeded.

12 **SECTION 2. AMENDMENT.** Section 65-10-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **65-10-03. Cost of appeal and attorney's fee fixed by the bureau.** The bureau shall
15 pay the cost of the judicial appeal and the attorney's fee for an injured employee's attorney
16 when the employee prevails. The employee ~~is deemed to have~~ has prevailed when any part of
17 the decision of the bureau is reversed ~~or the claim is remanded to the bureau for further~~

18 ~~administrative proceedings~~ and the employee receives an additional benefit as a result. An

19 injured employee does not prevail on a remand for further action or proceedings unless the

20 injured employee ultimately receives an additional benefit. The bureau shall pay the attorney's

21 fee from the bureau general fund. The amount of the attorney's fee must be determined in the

22 same manner as prescribed by the bureau for attorney fees, and the amount of attorney's fee

23 already allowed in administrative proceedings before the bureau must be taken into

24 consideration. The bureau shall establish, pursuant to section 65-02-08, a maximum fee to be

25 paid in an appeal. The maximum fee may be exceeded upon application of the injured

26 employee ~~and approval of the court~~ to the bureau, upon a finding that the claim had clear and

27 substantial merit, and that the legal or factual issues involved in the appeal were unusually

28 complex, but a court may not order that the maximum fee be exceeded. Notwithstanding the

29 foregoing, the bureau is liable for its costs on appeal if the decision of the bureau is affirmed.