

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1261
(Representative Berg)
(Senator Mutch)

AN ACT to amend and reenact section 65-05-15 of the North Dakota Century Code, relating to payment of work-related injuries on an aggravation basis.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-15 of the North Dakota Century Code is amended and reenacted as follows:

65-05-15. Aggravation awards. ~~The~~ When a compensable injury combines with a noncompensable injury, disease, or other condition, the bureau shall calculate an aggravation award in case of aggravation of a preexisting condition, disease, or infirmity by a compensable injury, and in case of aggravation of a compensable injury by a nonemployment injury award benefits on an aggravation basis, on the following terms:

- ~~1.~~ A "preexisting condition" means disability or impairment known in advance of the work injury. It is sufficient to invoke the aggravation statute if the preexisting condition is active at the time of the work injury, evidenced by work restriction (active disability) or interference with function (active impairment).
- ~~2.~~ In cases of preexisting a prior injury, disease, or other condition, aggravated, known in advance of the work injury, which has caused previous work restriction or interference with physical function the progression of which is substantially accelerated by, or the severity of which is substantially worsened by, a compensable injury, the bureau shall pay medical expense to treat benefits during the period of acute injury care in full. If evidence establishes that the preexisting condition has combined with the work injury, and will necessitate further treatment beyond the acute stage, an aggravation award may be invoked as to the remainder of the medical expense award. Likewise, the bureau shall pay temporary total disability to the worker, during the acute disability phase, in full. When the worker reaches maximum medical recovery, and is awarded permanent partial impairment, partial disability, permanent total disability, or vocational retraining services, and the evidence establishes that the preexisting condition has combined with the work injury to produce the continuing disability, an aggravation award may be invoked. The period of acute care is presumed to be sixty days immediately following the compensable injury, absent clear and convincing evidence to the contrary. Following the period of acute care, the bureau shall pay benefits on an aggravation basis.
- ~~3.~~ 2. In case of aggravation of If the progression of a prior compensable injury is substantially accelerated by, or the severity of the compensable injury is substantially worsened by a nonemployment noncompensable injury, the aggravation statute may be invoked where the nonemployment injury acts upon the prior compensable injury, and substantially contributes to the severity, acceleration, or progression of the final result, or, if it acts as a trigger to produce recurrent symptoms, and the trigger is itself a substantial aggravating or accelerating factor. All benefits may be apportioned when the aggravation statute is invoked under this subsection. The aggravation statute may not be invoked if the result is but a natural progression of the compensable injury disease, or other condition, the bureau shall pay benefits on an aggravation basis.
- ~~4.~~ 3. The bureau shall determine the pay benefits on an aggravation award based upon all evidence, as reasonably establishes basis as a percentage of the benefits to which the

~~injured worker would otherwise be entitled, equal to the proportion or percentage of cause as is reasonably of the resulting condition that is attributable to the compensable injury. If the degree of Benefits payable on an aggravation cannot be determined, the percentage award must be basis are presumed to be payable on a fifty percent of the total benefits recoverable if one hundred percent of the injury had been the result of employment basis. The party asserting a percentage other than the presumed fifty percent may rebut the presumption with clear and convincing evidence to the contrary.~~

5. ~~4.~~ Compensation paid on the basis of aggravation may not be less than ten dollars per week unless the actual wages of the claimant were less than ten dollars, in which event the actual wages must be paid in compensation. In case of death due to an employment aggravation condition, burial expenses and special benefits must be paid in full under sections 65-05-17 and 65-05-26. Dependency allowance may not be reduced by the percentage of aggravation and must be paid in full under section 65-05-09. When an injured worker is entitled to benefits on an aggravation basis, the bureau shall still pay costs of vocational rehabilitation, burial expenses under section 65-05-26, and dependency allowance on a one hundred percent basis.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1261.

House Vote: Yeas 90 Nays 6 Absent 1

Senate Vote: Yeas 31 Nays 15 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State