

HOUSE BILL NO. 1442

Introduced by

Representatives Boucher, Zaiser

Senators Heitkamp, Potter

1 A BILL for an Act to amend and reenact section 65-05-09.3 of the North Dakota Century Code,
2 relating to the workers' compensation retirement presumption application to permanently and
3 totally disabled injured workers; and to provide for application.

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

5 **SECTION 1. AMENDMENT.** Section 65-05-09.3 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **65-05-09.3. Retirement presumption - Termination of benefits upon retirement -**
8 **Application.**

- 9 1. An employee who has retired or voluntarily withdrawn from the labor force and
10 who, at that time, was not eligible to receive temporary total disability, temporary
11 partial disability, or permanent total disability benefits, or a rehabilitation allowance
12 from the organization is presumed retired from the labor market. The presumption
13 may be rebutted by a preponderance of the evidence; however, the subjective
14 statement of an employee that the employee is not retired is not sufficient in itself
15 to rebut objective evidence of retirement.
- 16 2. An injured employee who begins receiving social security retirement benefits or
17 other retirement benefits in lieu of social security retirement benefits, or who attains
18 retirement age for social security retirement benefits unless the employee proves
19 the employee is not eligible to receive social security retirement benefits or other
20 benefits in lieu of social security retirement benefits is considered retired. The
21 organization may not pay any disability benefits, rehabilitation benefits, or
22 supplementary benefits to an employee who is considered retired; however, the
23 employee remains eligible for medical benefits, permanent partial impairment
24 benefits, and the additional benefit payable under section 65-05-09.4.

- 1 3. The organization retains liability for disability benefits, rehabilitation benefits,
2 permanent partial impairment benefits, and medical benefits for an injured
3 employee who is receiving social security retirement benefits or other retirement
4 benefits in lieu of social security retirement benefits or who attains retirement age
5 for social security retirement benefits unless the employee is not eligible to receive
6 social security retirement benefits or other benefits in lieu of social security
7 retirement benefits and who is gainfully employed and who suffers an injury arising
8 out of and in the course of that employment. The organization may not pay
9 disability or rehabilitation benefits under this subsection for more than three years,
10 subject to section 65-05-09.2, for injuries occurring after August 1, 1997.
- 11 4. ~~This~~ Except as provided under subsection 5, this section applies to all persons who
12 begin receiving social security retirement benefits or other retirement benefits in
13 lieu of social security retirement benefits, or who attain retirement age for social
14 security retirement benefits unless the employee proves the employee is not
15 eligible to receive social security retirement benefits or other benefits in lieu of
16 social security retirement benefits, after July 31, 1995.
- 17 5. The termination of benefits upon retirement provision under subsection 2 does not
18 apply to an employee who is permanently and totally disabled due to an injury that
19 occurred before August 1, 1995, if that permanent and total disability occurred
20 before the employee was considered retired.

21 **SECTION 2. APPLICATION.** This Act does not apply retroactively. An injured worker
22 whose benefits were terminated under section 65-05-09.3 due to being considered retired who
23 becomes eligible for benefits under section 1 of this Act becomes eligible for reinstatement
24 upon the effective date of this Act and is not eligible for back payments.