



1997 ASSEMBLY BILL 725

January 20, 1998 - Introduced by LAW REVISION COMMITTEE. Referred to
Committee on Judiciary.

1 **AN ACT to amend** 102.18 (3) and 108.09 (6) (a) of the statutes; **relating to:**
2 dismissal of a petition for review of a worker's compensation or unemployment
3 compensation decision that is not timely filed with the labor and industry
4 review commission (suggested as remedial legislation by the labor and industry
5 review commission).

Analysis by the Legislative Reference Bureau

Under current law, the labor and industry review commission (LIRC) must dismiss a petition for review of a department of workforce development (DWD) hearing examiner's decision awarding or denying worker's compensation that is not received by DWD or LIRC within 21 days after DWD mailed a copy of the examiner's findings and order to the petitioner's last-known address, unless the petition shows probable good cause that the reason for failure to timely file the petition was beyond the petitioner's control. This bill requires LIRC to dismiss such a petition that is not timely filed unless the *petitioner* shows that the reason for failure to timely file was beyond the petitioner's control. As such, the bill eliminates the requirement that the *petition* shows *probable good cause* that the reason for failure to timely file was beyond the petitioner's control.

Similarly, under current law, LIRC must dismiss a petition for review of an appeal tribunal decision relating to unemployment compensation that is not received by DWD or LIRC or postmarked within 21 days after the appeal tribunal decision was mailed to the petitioner's last-known address, unless the petitioner

ASSEMBLY BILL 725

shows probable good cause that the reason for having failed to file the petition timely was beyond the control of the petitioner. This bill requires LIRC to dismiss such a petition that is not timely filed unless the petitioner shows that the reason for having failed to file the petition timely was beyond the control of the petitioner. As such, the bill eliminates the requirement that the petitioner show *probable good cause* that the reason for having failed to file the petition timely was beyond the control of the petitioner.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the labor and industry review commission (LIRC) and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 102.18 (3) of the statutes is amended to read:

102.18 (3) A party in interest may petition the commission for review of an examiner's decision awarding or denying compensation if the department or commission receives the petition within 21 days after the department mailed a copy of the examiner's findings and order to the party's last-known address. The commission shall dismiss a petition which is not timely filed unless the petitioner shows ~~probable good cause~~ that the reason for failure to timely file was beyond the petitioner's control. If no petition is filed within 21 days from the date that a copy of the findings or order of the examiner is mailed to the last-known address of the parties in interest, the findings or order shall be considered final unless set aside, reversed or modified by the examiner within that time. If the findings or order are set aside by the examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the examiner the time for filing a petition commences with the date that notice

ASSEMBLY BILL 725

1 of reversal or modification is mailed to the last-known address of the parties in
2 interest. The commission shall either affirm, reverse, set aside or modify the
3 findings or order in whole or in part, or direct the taking of additional evidence. This
4 action shall be based on a review of the evidence submitted.

NOTE: This SECTION changes the standard for granting relief from a late petition to LIRC for review of a worker's compensation case to a "reason ... beyond the petitioner's control", from the current standard of "probable good cause that the reason for failure to timely file was beyond the petitioner's control". This SECTION also requires the petitioner, rather than the petition itself, to make the showing of the reason for the late filing of the petition. According to LIRC, the actual practice in administering the standard for granting relief from a late petition for review is to apply a "reason beyond control" standard. In addition, the reasons for the late filing of a petition for review in a worker's compensation case are usually determined after the receipt of the petition, which is the reason for changing the law to require the petitioner, rather than the petition, to show the reasons for the late filing.

5 **SECTION 2.** 108.09 (6) (a) of the statutes is amended to read:

6 108.09 (6) (a) The department or any party may petition the commission for
7 review of an appeal tribunal decision, pursuant to commission rules, if such petition
8 is received by the department or commission or postmarked within 21 days after the
9 appeal tribunal decision was mailed to the party's last-known address. The
10 commission shall dismiss any petition if not timely filed unless the petitioner shows
11 ~~probable good cause~~ that the reason for having failed to file the petition timely was
12 beyond the control of the petitioner. If the petition is not dismissed the commission
13 may take action under par. (d).

NOTE: This SECTION makes a similar change to the standard for granting relief from a late petition to LIRC for review of an unemployment compensation case. Specifically, this SECTION changes that standard to a "reason ... beyond the control of the petitioner", from the current standard of "probable good cause that the reason for having failed to file the petition timely was beyond the control of the petitioner". Unlike the procedure for review of a worker's compensation case, however, current law already requires the petitioner, rather than the petition itself, to make the showing of the reason for the late filing of the petition in an unemployment compensation case.

14

(END)