

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2048
(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact sections 65-02-08 and 65-10-03 of the North Dakota Century Code, relating to workers' compensation attorney's fees and costs; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

65-02-08. Rulemaking power of the organization - Timeliness for issuance of decision - Fees prescribed by organization - Attorney's fees and costs.

1. The organization shall adopt rules necessary to carry out this title. All fees on claims for medical and hospital goods and services provided under this title to an injured employee must be in accordance with schedules of fees adopted by the organization. Before the effective date of any adoption of, or change to, a fee schedule, the organization shall hold a public hearing, which is not subject to chapter 28-32. ~~The organization shall establish, by administrative rule, costs payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for legal services following issuance of an administrative order reducing or denying benefits.~~
2. The organization shall issue a decision within sixty days ~~effollowing~~ the date when all elements of initial filing or notice of reapplication of claim ~~have been~~ are satisfied or a claim for additional benefits over and above benefits previously awarded ~~has been~~ is made. ~~Satisfaction~~ The organization's administrative rules must define satisfaction of elements of filing ~~must be defined by administrative rule. The organization shall pay an injured employee's attorney's fees and costs from the organization's general fund.~~
3.
 - a. By administrative rule, the organization shall establish costs payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for legal services following issuance of an administrative or judicial order reducing or denying benefits.
 - b. Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule. The amount of the attorney's fees must be determined in the same manner as prescribed by the organization for attorney's fees. The total amount of attorney fees paid by the organization may not exceed the fee cap established for the highest appellate level at which the injured employee prevails.
 - c. The organization shall pay an attorney's fees and costs ~~when:~~
4. ~~Theif~~ the injured employee has prevailed in binding dispute resolution under section 65-02-20:
 2. ~~The,~~ the injured employee has prevailed after an administrative hearing under chapter 28-32, or the injured employee prevailed at the district or supreme court as provided for under section 65-10-03. The organization shall pay the attorney's fees and costs at the time the injured employee prevails. The organization may not condition payment of attorney's fees and costs upon the injured employee prevailing upon any future appeal.

- d. ~~An injured employee has prevailed only when~~ does not prevail unless an additional benefit, previously denied, is paid. An injured employee does not prevail on a remand for further action or proceedings unless that injured employee ultimately receives an additional benefit as a result of the remand.
- e. Notwithstanding the requirement under subdivision d that an additional benefit be paid or received, an injured employee who prevails at the administrative or district court level is eligible for attorney's fees and costs for prevailing at that level, regardless of whether the organization ultimately prevails upon the organization's appeal of an administrative or district court order.
- f. ~~This section~~ subsection does not prevent an injured employee or an employer from hiring or paying an attorney; ~~however, the employee's attorney may not seek or obtain costs or attorney's fees from both the organization and the employee relative to the same claim.~~
- g. All disputes relating to payment or denial of an attorney's fees or costs must be submitted to the court, hearing officer, or arbitrator for decision, but a court, hearing officer, or arbitrator may not order that the maximum fees be exceeded.
- h. The organization shall pay an injured employee's attorney's fees and costs from the organization's general fund. The organization is liable for its costs on appeal if the decision of the organization is affirmed.

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

65-10-03. Cost of appeal and attorney's fees fixed by the organization.

The organization shall pay the cost of the judicial appeal and the attorney's fees for an injured employee's attorney ~~when~~ if the employee prevails as provided under section 65-02-08. ~~The employee has prevailed when any part of the decision of the organization is reversed and the employee receives an additional benefit as a result. An injured employee does not prevail on a remand for further action or proceedings unless the injured employee ultimately receives an additional benefit. The organization shall pay the attorney's fees from the organization's general fund. The amount of the attorney's fees must be determined in the same manner as prescribed by the organization for attorney's fees, and the amount of attorney's fees already allowed in administrative proceedings before the organization must be taken into consideration. The organization shall establish, pursuant to section 65-02-08, a maximum fee to be paid in an appeal. The maximum fee set by the organization may be exceeded upon application of the injured employee to the organization, upon a finding that the claim had clear and substantial merit, and that the legal or factual issues involved in the appeal were unusually complex, but a court may not order that the maximum fee be exceeded. Notwithstanding the foregoing, the organization is liable for its costs on appeal if the decision of the organization is affirmed.~~

SECTION 3. APPLICATION. This Act applies to administrative and judicial appeal decisions issued on and after the effective date of this Act.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2048.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 89 Nays 0 Absent 5

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State