

CHAPTER 123. GENERAL PROVISIONS—PART II

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Authority

The provisions of this Chapter 123 issued under sections 401.1 and 435 of the Workers' Compensation Act (77 P. S. §§ 710 and 991), unless otherwise noted.

Source

The provisions of this Chapter 123 adopted January 16, 1998, effective January 17, 1998, 28 Pa.B. 329, unless otherwise noted.

**Subchapter A. OFFSET OF UNEMPLOYMENT COMPENSATION,
SOCIAL SECURITY (OLD AGE), SEVERANCE AND PENSION
BENEFITS**

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§ 123.1. Purpose.

This subchapter interprets the provisions of the act which authorize the offset of workers' compensation benefits by amounts received in unemployment compensation, Social Security (old age), severance and pension benefits, subsequent to the work-related injury. Offsets shall be dollar-for-dollar and calculated as set forth in §§ 123.4—123.11. Offsets in excess of the weekly workers' compensation rate shall accumulate as a credit toward the future payment of workers' compensation benefits.

Notes of Decisions*Severance Benefits*

Employer was entitled to take an offset against Workers' Compensation claimant's benefits in the amount of a severance payment made by employer to claimant. *Kramer v. WCAB (Rite Aid Corp.)*, 883 A.2d 518, 529 (Pa. 2005).

§ 123.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ADR—Alternative Dispute Resolution.

Act—The Workers' Compensation Act (77 P. S. §§ 1—2626).

Actuarial equivalent—The value of lump-sum pension payout in terms of a monthly benefit if the funds had been used to purchase an annuity (either qualified joint and survivor or life annuity) available on the market, considering interest and mortality, at the time of the employee's receipt of the lump-sum benefit.

CBA—Collective Bargaining Agreements.

Defined-benefit plan—A pension plan in which the benefit level is established at the commencement of the plan and actuarial calculations determine the varying contributions necessary to fund the benefit at an employee's retirement.

Defined-contribution plan—A pension plan which provides for an individual account for each participant and for benefits based solely upon the amount of accumulated contributions and earnings in the participant's account. At the time of retirement the accumulated contributions and earnings determine the amount of the participant's benefit either in the form of a lump-sum distribution or annuity.

IRA—An individual retirement account as that term is utilized in 26 U.S.C.A. §§ 219 and 408(a).

IRE—Impairment Rating Evaluation.

Multi-employer pension plan—A plan to which more than one employer is required to contribute and is maintained under one or more collective bargaining agreements between one or more employe organizations and more than one employer.

Net—The amount of unemployment compensation, Social Security (old age), severance or pension benefits received by the employe after required deductions for local, State and Federal taxes and amounts deducted under the Federal Insurance Contributions Act (FICA) (26 U.S.C.A. §§ 3101—3126).

Pension—A plan or fund established or maintained by an employer, an employe organization, or both, which provides retirement income, in the form of retirement or disability benefits to employes or which results in deferral of income by employes extending to termination of employment and beyond.

Severance benefit—A benefit which is taxable to the employe and paid as a result of the employe's separation from employment by the employer liable for the payment of workers' compensation, including benefits in the form of tan-

gible property. The term does not include payments received by the employee based on unused vacation or sick leave or otherwise earned income.

Social Security (old age) benefits—Benefits received by an employee under the Social Security Act (42 U.S.C.A. §§ 301—1397(e)) relating to Social Security retirement income.

Notes of Decisions

Furlough Benefit

Employer was not entitled to a credit against claimant's workers' compensation award for furlough benefits paid to claimant who was expected to and did, in fact, return to work; furlough benefits are statutorily not considered a severance benefit which is awarded to claimant who separates from employment thus ending the employment relationship with employer. *Kelly v. Workers' Compensation Appeal Board (U. S. Airways Group)*, 935 A.2d 68, 71 (Pa. Cmwlth. 2007)

Severance Benefits

The employer may be entitled to an offset for the amount paid to the claimant as "severance," which is all taxable benefits paid at separation other than for unused vacation, sick leave or otherwise earned income. *Hulmes v. Workers' Compensation Appeal Board (Rite Aid Corp.)*, 811 A.2d 1126 (Pa. Cmwlth. 2002).

§ 123.3. Employee report of benefits subject to offset.

(a) Employees shall report to the insurer amounts received in unemployment compensation, Social Security (old age), severance and pension benefits on form LIBC-756, "Employee's Report of Benefits." This includes amounts withdrawn or otherwise utilized from pension benefits which are rolled over into an IRA or other similarly restricted account while at the same time the employee is receiving workers' compensation benefits.

(b) Form LIBC-756 shall be completed and forwarded to the insurer within 30 days of the employee's receipt of any of the benefits specified in subsection (a) or within 30 days of any change in the receipt of the benefits specified in subsection (a), but at least every 6 months.

Cross References

This section cited in 34 Pa. Code § 123.4 (relating to application of the offset generally); and 34 Pa. Code § 123.5 (relating to offset for benefits already received).

§ 123.4. Application of the offset generally.

(a) After receipt of Form LIBC-756, the insurer may offset workers' compensation benefits by amounts received by the employee from any of the sources in § 123.3 (relating to employee report of benefits subject to offset). The offset of workers' compensation benefits only applies with respect to amounts of unemployment compensation, Social Security (old age), severance and pension benefits received subsequent to the work-related injury.

(1) The offset applies only to wage-loss benefits (as opposed to medical benefits, specific loss or survivor benefits).

- (2) The offset for amounts received in Social Security (old age), severance and pension benefits only applies to individuals with claims for injuries suffered on or after June 24, 1996.
- (3) The offset for amounts received in unemployment compensation benefits applies to all claims regardless of the date of injury.
- (b) At least 20 days prior to taking the offset, the insurer shall notify the employee, on Form LIBC-761, "Notice of Workers' Compensation Benefit Offset," that the workers' compensation benefits will be offset. The notice shall indicate:
- (1) The amount of the offset.
 - (2) The type of offset (that is—unemployment compensation, Social Security (old age), severance or pension).
 - (3) How the offset was calculated, with supporting documentation, which may include information provided by the employee.
 - (4) When the offset commences.
 - (5) The amount of any recoupment, if applicable.
- (c) Whenever the insurer's entitlement to the offset changes, the insurer shall notify the employee of the change at least 20 days prior to the adjustment on Form LIBC-761.
- (d) The insurer shall provide a copy of Form LIBC-761, to the employee, the employee's counsel, if known, and the Department. The form shall be provided to the employee consistent with section 406 of the act (77 P. S. § 717).
- (e) The employee may challenge the offset by filing a petition to review offset with the Department.
- (f) When Federal, State or local taxes are paid with respect to amounts an employee receives in unemployment compensation, Social Security (old age), severance or pension benefits, the insurer shall repay the employee for amounts previously offset, and paid in taxes, from workers' compensation benefits, when the offset was calculated on the pretax amount of the benefit received. To request repayment for amounts previously offset and paid in taxes, the employee shall notify the insurer in writing of the amounts paid in taxes previously included in the offset.

Cross References

This section cited in 34 Pa. Code § 123.1 (relating to purpose); and 34 Pa. Code § 123.5 (relating to offset for benefits already received).

§ 123.5. Offset for benefits already received.

(a) If the insurer receives information that the employee has received benefits from one or more of the sources in § 123.3 (relating to employee report of benefits subject to offset) subsequent to the date of injury, the insurer may be entitled to an offset to the workers' compensation benefit.

(b) The net amount received by the employee shall be calculated consistent with §§ 123.6—123.11. The amount received by the employee shall be divided by the weekly workers' compensation rate. The result shall be the number of weeks, and fraction thereof, the insurer is entitled to offset against future payments of workers' compensation benefits.

(c) The insurer shall notify the employee, the employee's counsel, if known, and the Department of the offset as specified in § 123.4(b) (relating to application of the offset generally).

(d) The employee may challenge the offset by filing a petition to review offset with the Department.

Cross References

This section cited in 34 Pa. Code § 123.1 (relating to purpose).

§ 123.6. Application of offset for Unemployment Compensation (UC) benefits.

(a) Workers' compensation benefits otherwise payable shall be offset by the net amount an employe receives in UC benefits subsequent to the work-related injury. This offset applies only to UC benefits which an employe receives and which are attributable to the same time period in which an employe also receives workers' compensation benefits.

(b) The offset may not apply to benefits for which an employe may be eligible, but is not receiving.

(c) The offset to workers' compensation benefits for amounts received in UC benefits is triggered when an employe becomes eligible for and begins receiving the UC benefits.

(1) When an employe receives UC benefits which the employe is later required to repay based upon a determination of ineligibility, the insurer may not offset the workers' compensation benefits.

(2) When an employe's workers' compensation benefits have been offset by the amount received in UC benefits, and the employe is required to repay UC benefits based upon a determination of ineligibility, the insurer shall repay the employe for the amounts previously offset from the workers' compensation benefits. The employe may request that the insurer remit repayment directly to the Bureau of Unemployment Compensation Benefits and Allowances (BUCBA).

(d) When an employe receives a lump-sum award from BUCBA, the insurer may offset the amount received by the employe against future payments of workers' compensation benefits. The amount received by the employe shall be divided by the weekly workers' compensation rate. The result shall be the number of weeks, and fraction thereof, the insurer is entitled to offset against future payments of workers' compensation benefits.

Cross References

This section cited in 34 Pa. Code § 123.1 (relating to purpose); and 34 Pa. Code § 123.5 (relating to offset for benefits already received).

§ 123.7. Application of offset for Social Security (old age) benefits.

(a) Workers' compensation benefits otherwise payable shall be offset by 50% of the net amount received in Social Security (old age) benefits. The offset shall only apply to amounts which an employe receives subsequent to the work-related injury. The offset may not apply to Social Security (old age) benefits which commenced prior to the work-related injury and which the employe continues to receive subsequent to the work-related injury.

(b) The offset may not apply to benefits to which an employe may be entitled, but is not receiving.

(c) The offset shall be applied on a weekly basis. To calculate the weekly offset, 50% of the net monthly Social Security (old age) benefit received by the employe shall be divided by 4.34.

Cross References

This section cited in 34 Pa. Code § 123.1 (relating to purpose); and 34 Pa. Code § 123.5 (relating to offset for benefits already received).

§ 123.8. Offset for pension benefits generally.

(a) Workers' compensation benefits otherwise payable shall be offset by the net amount an employe receives in pension benefits to the extent funded by the employer directly liable for the payment of workers' compensation.

(b) The pension offset shall apply to amounts received from defined-benefit and defined-contribution plans.

(c) The offset may not apply to pension benefits to which an employe may be entitled, but is not receiving.

(d) In calculating the offset amount for pension benefits, investment income attributable to the employer's contribution to the pension plan shall be included on a prorata basis.

Notes of Decisions

Defined Benefit Pension

Employer who petitioned for modification of claimant's workers' compensation benefits by offset against its workers' compensation obligation due to claimant's receipt of disability pension was entitled to present expert actuarial testimony to establish extent employer funded claimant's defined benefit pension; claimant's disability benefit was not based on contributions by either the employer or employee but by factors known only at retirement including length of employment, final average salary, and retirement age, and employer's contribution could only be determined by an actuarial formula. *Pennsylvania State University v. Workers' Compensation Appeal Board (Hensal)*, 911 A.2d 225, 229—230 (Pa. Cmwlth. 2006).

Public employer, who filed notice of compensation offset claiming a portion of claimant's workers' compensation award was subject to an offset due to claimants' receipt of a disability pension under a defined benefit plan, was entitled to an offset based on expert actuarial testimony to establish amount of the requested offset where workers' compensation judge found that employer's actuarial evidence was credible. *Department of Public Welfare v. Workers' Compensation Appeal Board (Cato)*, 911 A.2d 241 (Pa. Cmwlth. 2006).

Pension Offset

Workers' Compensation Judge correctly used expert actuarial opinion to establish employer's contribution to employee's retirement annuity to determine amount of credit employer could claim against employee's workers' compensation benefit. *Department of Pub. Welfare v. Workers' Compensation Appeal Board (Harvey)*, 960 A.2d 957, 964—965 (Pa. Cmwlth. 2008).

Where there is a defined-benefit plan, an employer cannot meet its burden of establishing the amount of its offset for workers' compensation award absent actuarial testimony. *City of Philadelphia v. Workers' Compensation Appeal Board (Andrews)*, 948 A.2d 221 (Pa. Cmwlth. 2008).

Employer may take a credit for workers' compensation claimant's receipt of pension benefit in defined-benefit and defined-contribution plans to the extent it funded those benefits; employer's right to a pension offset no longer turns on whether the pension constitutes payments in lieu of compensation, nor does it matter that the pension is a service-connected disability pension. *City of Philadelphia v. Workers' Compensation Appeal Board (Andrews)*, 948 A.2d 221 (Pa. Cmwlth. 2008).

Cross References

This section cited in 34 Pa. Code § 123.1 (relating to purpose); and 34 Pa. Code § 123.5 (relating to offset for benefits already received).

§ 123.9. Application of offset for pension benefits.

(a) Offsets of amounts received from pension benefits shall be achieved on a weekly basis. If the employee receives the pension benefit on a monthly basis, the net amount contributed by the employer and received by the employee shall be divided by 4.34. The result is the amount of the weekly offset to the workers' compensation benefit.

(b) When an employee receives a pension benefit in the form of a lump-sum payment, the actuarial equivalent of the lump-sum with respect to the annuity options (qualified joint and survivor annuity or life annuity) available at the time of the employee's receipt shall be used as the basis for calculating the offset to the workers' compensation benefit. The monthly annuity equivalent shall be divided by 4.34. The result shall be the offset to the workers' compensation benefit on a weekly basis.

(c) Pension benefits which are rolled over into an IRA or other similarly restricted account may not offset workers' compensation benefits, so long as the employee does not withdraw or otherwise utilize the pension benefits from the restricted account while simultaneously receiving workers' compensation benefits from the liable employer.

(d) If the employee, while receiving workers' compensation benefits from the liable employer, withdraws or otherwise utilizes pension benefits from the IRA or

other similarly restricted account, when the IRA or account is funded in whole or in part by the liable employer's contributions, the insurer is entitled to an offset to workers' compensation benefits.

(1) If the employee begins receiving a monthly payment from the IRA or other similarly restricted account, the insurer shall receive an offset to the workers' compensation benefit equal to the offset the insurer would be entitled to if the employee were receiving a monthly pension benefit under subsection (a).

(2) If the employee withdraws or otherwise utilizes an amount from the IRA or other similarly restricted account which is greater than the actuarial equivalent of the lump sum with respect to the annuity options (qualified joint and survivor annuity or life annuity) available at the time of the employee's receipt, the insurer shall be entitled to an offset against future payments of workers' compensation benefits in an amount equal to the amount of the pension benefit withdrawn or otherwise utilized by the employee. The amount of the pension benefit withdrawn or otherwise utilized by the employee shall be divided by the weekly workers' compensation rate. The result shall be the number of weeks, and fraction thereof, the insurer may offset against future payments of workers' compensation benefits.

(e) The employee shall report the subsequent receipt of pension benefits from the IRA or other similarly restricted account to the insurer on Forms LIBC-756 and LIBC-750, "Employee Report of Wages (Other Than Workers' Compensation Benefits Received)."

Cross References

This section cited in 34 Pa. Code § 123.1 (relating to purpose); and 34 Pa. Code § 123.5 (relating to offset for benefits already received).

§ 123.10. Multiemployer pension fund offsets.

(a) When the pension benefit is payable from a multi-employer pension plan, only that amount which is contributed by the employer directly liable for the payment of workers' compensation shall be used in calculating the offset to workers' compensation benefits.

(b) To calculate the appropriate offset amount, the portion of the annuity purchased by the liable employer's contributions shall be as determined by the pension fund's actuary. The ratio of the portion of the annuity purchased by the liable employer's contributions to the total annuity shall be multiplied by the net benefit received by the employee from the pension fund on a weekly basis. The result is the amount of the offset to be applied to the workers' compensation benefit on a weekly basis.

(c) If the employee receives the multi-employer pension benefit on a monthly basis, the net amount received by the employee shall be multiplied by the ratio of the liable employer's contribution to the pension plan on behalf of the employee and that product shall be divided by 4.34. The result is the amount of the offset to be applied to the workers' compensation benefit on a weekly basis.

(d) If the employee receives the multi-employer pension benefit in a lump sum, the actuarial equivalent of the lump sum with respect to the annuity options

(qualified joint and survivor annuity or life annuity) available at the time of the employee's receipt of the benefit shall be used as the basis for calculating the offset to the workers' compensation benefit. The ratio of the employer's contribution to the pension plan shall be multiplied by the monthly annuity value of the pension benefit. The result shall be divided by 4.34 to achieve the offset to the workers' compensation benefit on a weekly basis.

Notes of Decisions

Nonmunicipal Contributions

In determining the correct calculation of an offset, the Commonwealth was not the "employer directly liable" for compensation under section 204(a) and third-party contributions to the pension fund should not be used for calculation of a pension setoff. The employer was entitled to a credit only to the extent it directly contributed to the pension. *Lower Merion Township v. Workers' Compensation Appeal Board*, 783 A.2d 878 (Pa. Cmwlth. 2001), appeal denied 568 Pa. 745, 798 A.2d 1294 (Pa. 2002).

Cross References

This section cited in 34 Pa. Code § 123.1 (relating to purpose); and 34 Pa. Code § 123.5 (relating to offset for benefits already received).

§ 123.11. Application of offset for severance benefits.

(a) Workers' compensation benefits otherwise payable shall be offset by amounts an employee receives in severance benefits subsequent to the work-related injury. The offset may not apply to severance benefits to which an employee may be entitled, but is not receiving.

(b) The net amount of any severance benefits shall offset workers' compensation benefits on a weekly basis except as provided in subsections (c) and (d).

(c) When the employee receives severance benefits in a lump-sum payment, the net amount received by the employee shall be divided by the weekly workers' compensation rate. The result is the number of weeks, and fraction thereof, the insurer may offset against future payments of workers' compensation benefits.

(d) When an employee receives a severance benefit in the form of tangible property, the market value of the property, as determined for Federal tax purposes, shall be divided by the weekly workers' compensation rate. The result is the number of weeks, and fraction thereof, the insurer may offset against future payments of workers' compensation benefits.

Cross References

This section cited in 34 Pa. Code § 123.1 (relating to purpose); and 34 Pa. Code § 123.5 (relating to offset for benefits already received).

Subchapter B. IMPAIRMENT RATINGS

Sec.

123.101. Purpose.

123.102. IRE requests.

123.103. Physicians.

123.104. Initial IRE; designation of physician by Department.

123.105. Impairment rating determination.

§ 123.101. Purpose.

This subchapter interprets section 306(a.2) of the act (77 P. S. § 511.2) which provides for a determination of whole body impairment due to the compensable injury after the receipt of 104 weeks of total disability compensation, unless otherwise agreed to by the parties.

§ 123.102. IRE requests.

(a) During the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits, the insurer may request the employee's attendance at an IRE. If the evaluation is scheduled to occur during this 60-day time period, the adjustment of the benefit status shall relate back to the expiration of the employee's receipt of 104 weeks of total disability benefits. In all other cases, the adjustment of the disability status shall be effective as of the date of the evaluation or as determined by the evaluating physician.

(b) Absent agreement between the insurer and the employee, an IRE may not be performed prior to the expiration of the employee's receipt of 104 weeks of total disability benefits.

(c) When an insurer requests the employee's attendance at an IRE during the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits and the employee fails, for any reason, to attend the IRE, when the failure results in the performance of the IRE more than 60 days beyond the expiration of the 104-week period, the adjustment of disability status shall relate back to the expiration of the employee's receipt of 104 weeks of total disability benefits.

(d) The employee's receipt of 104 weeks of total disability benefits shall be calculated on a cumulative basis.

(e) The insurer shall request the employee's attendance at the IRE in writing on Form LIBC-765, "Impairment Rating Evaluation Appointment," and specify therein the date, time and location of the evaluation and the name of the physician performing the evaluation, as agreed by the parties or designated by the Department. The request shall be made to the employee and employee's counsel, if known.

(f) Consistent with section 306(a.2)(6) of the act (77 P. S. § 511.2), the insurer's failure to request the evaluation during the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits may not result in a waiver of the insurer's right to compel the employee's attendance at an IRE.

(g) The insurer maintains the right to request and receive an IRE twice in a 12-month period. The request and performance of IREs may not preclude the insurer from compelling the employee's attendance at independent medical examinations or other expert interviews under section 314 of the act (77 P. S. § 651).

(h) The employee's failure to attend the IRE under this section may result in a suspension of the employee's right to benefits consistent with section 314(a) of the act.

Notes of Decisions

Conflict with Statute

Section 306(a.2)(6) of the Workers' Compensation Act (77 P.S. § 511.2(a.2)(6)), requires an insurer to request an impairment rating evaluation (IRE) within 60 days of the expiration of the 104-week period of total disability for purposes of obtaining the automatic relief set forth in 77 P.S. § 511.2(2). An insurer's failure to request an IRE within the established time frame does not preclude the insurer from requesting that an employee submit to an IRE at a later time. The results of the IRE will not be self-executing, but rather applicable to a traditional administrative process. *Gardner v. Workers' Compensation Appeal Board (Genesis Health Ventures)*, 814 A.2d 884 (Pa. Cmwlth. 2003), 577 Pa. 703, 877 A.2d 59 (2004); *affirmed Gardner v. Workers' Compensation Appeal Board (Genesis Health Ventures)*, 888 A.2d 758, 768 (Pa. 2005).

Impairment Rating Evaluations (IREs)

An employer is entitled to the timely request of two Impairment Rating Evaluations (IREs) within a 12 month period without any requirement that employer demonstrate a change in claimant's medical condition, permanent impairments, and/or disability. *Lewis v. Workers' Compensation Appeal Board (Wal-Mart Stores, Inc.)*, 856 A.2d 313, 318 (Pa.Cmwlth. 2004).

Cross References

This section cited in 34 Pa. Code § 123.105 (relating to impairment rating determination).

§ 123.103. Physicians.

(a) Physicians performing IREs shall:

(1) Be licensed in this Commonwealth and certified by an American Board of Medical Specialties-approved board or its osteopathic equivalent.

(2) Be active in clinical practice at least 20 hours per week.

(b) For purposes of this subchapter, the phrase "active in clinical practice" means the act of providing preventive care and the evaluation, treatment and management of medical conditions of patients on an ongoing basis.

(c) Physicians chosen by employees to perform IREs, for purposes of appealing a previous adjustment of benefit status, shall possess the qualifications in subsection (a) and shall be active in clinical practice as specified in subsection (b).

(d) In addition to the requirements of subsections (a) and (b), physicians designated by the Department to perform IREs shall meet training and certification requirements which may include, but are not limited to, one or more of the following:

(1) Required attendance at a Departmentally approved training course on the performance of evaluations under the AMA "Guides to the Evaluation of Permanent Impairment."

(2) Certification upon passage of a Departmentally approved examination on the AMA "Guides to the Evaluation of Permanent Impairment."

(3) Other requirements as approved by the Department.

Cross References

This section cited in 34 Pa. Code § 123.105 (relating to impairment rating determination).

§ 123.104. Initial IRE; designation of physician by Department.

(a) The insurer is responsible for scheduling the initial IRE. Only the insurer may request that the Department designate an IRE physician.

(b) The Department's duty to designate an IRE physician pertains only to the initial IRE. A list of Departmentally approved IRE physicians will be available upon request.

(c) The request to designate a physician shall be made on Form LIBC-766, "Request for Designation of a Physician to Perform an Impairment Rating Evaluation."

(d) Within 20 days of receipt of the designation request, the Department will designate a physician to perform the IRE.

(e) The Department will provide the name and address of the physician designated to perform the IRE to the employee, the insurer and the attorneys for the parties, if known.

Notes of Decisions*Employer Cannot Unilaterally Select IRE Physician*

Where the goal of an employer's request that claimant undergo an Impairment Rating Evaluation (IRE) is to determine claimant's degree of impairment, agreement of the parties or the Bureau of Workers' Compensation designation are the sole and exclusive avenues for physician selection; employer is not entitled to unilaterally select an IRE physician. *Lewis v. W.C.A.B. (Wal-Mart Stores, Inc.)*, 856 A.2d 313, 319 (Pa.Cmwlth. 2004).

§ 123.105. Impairment rating determination.

(a) When properly requested under § 123.102 (relating to IRE requests), an IRE shall be conducted in all cases and an impairment rating determination must result under the most recent edition of the AMA "Guides to the Evaluation of Permanent Impairment."

(b) To ascertain an accurate percentage of the employee's whole body impairment, when the evaluating physician determines that the compensable injury incorporates more than one pathology, the evaluating physician may refer the employee to one or more physicians specializing in the specific pathologies which constitute the compensable injury. Any physician chosen by the evaluating physician to assist in ascertaining the percentage of whole body impairment shall possess the qualifications as specified in § 123.103(a) and (b) (relating to physicians). The referring physician remains responsible for determining the whole body impairment rating of the employee.

(c) The physician performing the IRE shall complete Form LIBC-767, "Impairment Rating Determination Face Sheet" (Face Sheet), which sets forth the impairment rating of the compensable injury. The physician shall attach to the Face Sheet the "Report of Medical Evaluation" as specified in the AMA "Guides to the Evaluation of Permanent Impairment." The Face Sheet and report shall be provided to the employee, employee's counsel, if known, insurer and the Department within 30 days from the date of the impairment evaluation.

(d) If the evaluation results in an impairment rating of less than 50%, the employee shall receive benefits partial in character. To adjust the status of the employee's benefits from total to partial, the insurer shall provide notice to the

employee, the employee's counsel, if known, and the Department, on Form LIBC-764, "Notice of Change of Workers' Compensation Disability Status," of the following:

- (1) The evaluation has resulted in an impairment rating of less than 50%.
- (2) Sixty days from the date of the notice the employee's benefit status shall be adjusted from total to partial.
- (3) The adjustment of benefit status does not change the amount of the weekly workers' compensation benefit.
- (4) An employee may only receive partial disability benefits for a maximum of 500 weeks.
- (5) The employee may appeal the adjustment of benefit status to a workers' compensation judge by filing a Petition for Review with the Department.
- (e) If the evaluation results in an impairment rating that is equal to or greater than 50%, the employee shall be presumed to be totally disabled and shall continue to receive total disability compensation. The presumption of total disability may be rebutted at any time by a demonstration of earning power in accordance with section 306(b)(2) of the act (77 P. S. § 512(2)) or by a subsequent IRE which results in an impairment rating of less than 50%.
- (f) At any time during the receipt of 500 weeks of partial disability compensation, the employee may appeal the adjustment of benefit status to a workers' compensation judge by filing a Petition for Review.

Notes of Decisions

Presumption of Total Disability Can Be Rebutted

Employer may seek to change claimant's status based on an independent medical examination and earning power assessment, even where an impairment rating evaluation determined claimant to be at least 50% impaired; an impairment rating of 50% fixes a presumption of total disability status, but it is a presumption that can be rebutted by evidence that the claimant can perform some work. *Sign Innovation v. Workers' Compensation Appeal Board (Ayers)*, 937 A.2d 623, 626 (Pa. Cmwlth. 2007).

Conflict with statute

Because Section 123.105(f) permits a workers' compensation claimant to appeal the adjustment of benefit status at any time during the 500-week period of partial disability without restriction, it is invalid, as Section 306(a.2)(4) of the Act (77 P. S. § 511.2(4)), imposes the requirement that there be a determination that the claimant's impairment is equal to or greater than 50 percent in order for the claimant to appeal the adjustment of benefit status at any time during the 500 weeks of partial disability. *Johnson v. Workers' Compensation Appeal Board (Sealy Components Group)*, 982 A.2d 1253 (Pa. Cmwlth. 2009).

Subchapter C. QUALIFICATIONS FOR VOCATIONAL EXPERTS APPROVED BY THE DEPARTMENT

Sec.

123.201. Purpose.

123.201a. [Reserved].

123.201b. Definitions.

123.202. Qualifications for current vocational experts under Act 57 of 1996.

123.202a. Qualifications for vocational experts under Act 53 of 2003.

123.203. Role of workers' compensation judges.

123.204. Conduct of vocational experts.

123.205. Financial interest disclosure.

§ 123.201. Purpose.

This subchapter implements and interprets provisions of the act which permit the Department to establish qualifications for vocational experts who will conduct earning power assessment interviews under sections 306(b) and 449 of the act (77 P. S. §§ 512 and 1000.5). This subchapter also implements the act's requirements for compliance with the Code of Professional Ethics for Rehabilitation Counselors pertaining to the conduct of expert witnesses and disclosure of financial interest.

Source

The provisions of this § 123.201 adopted January 16, 1998, effective January 17, 1998, 28 Pa.B. 329; amended June 22, 2007, effective June 23, 2007, 37 Pa.B. 2804. Immediately preceding text appears at serial pages (309340) to (309341).

§ 123.201a. [Reserved].**Source**

The provisions of this § 123.201a adopted March 26, 2004, effective March 27, 2004, 33 Pa.B. 1684; reserved June 22, 2007, effective June 23, 2007, 37 Pa.B. 2804. Immediately preceding text appears at serial page (309341).

§ 123.201b. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Financial interest—An interest equated with money or its equivalent, and includes any of the following:

- (i) A present or former ownership interest in or with the entity or individual conducting the earning power assessment interview.
- (ii) A present or former employment relationship with the entity or individual conducting the earning power assessment interview.
- (iii) A contractual or referral arrangement that would require or allow the insurer to provide compensation or other consideration based upon the vocational expert's opinion or the outcome of the vocational expert's earning power assessment interview.

Insurer—An insurer is any of the following:

- (i) A workers' compensation insurance carrier.
- (ii) The State Workers' Insurance Fund of the Department.
- (iii) An employer authorized by the Department to self-insure its workers' compensation liability under section 305 of the act (77 P. S. § 501).
- (iv) A group of employers authorized by the Department to act as a self-insurance fund under section 802 of the act (77 P. S. § 1036.2).

Source

The provisions of this § 123.201b adopted June 22, 2007, effective June 23, 2007, 37 Pa.B. 2804.

§ 123.202. Qualifications for current vocational experts under Act 57 of 1996.

(a) This section applies to individuals who, before June 23, 2007, conducted earning power assessment interviews under section 306(b) of the act (77 P. S.

§ 512). These individuals continue to meet the minimum qualifications established under section 306(b) if they possess one of the following:

(1) Both of the following:

(i) Certification by one of the following Nationally recognized professional organizations:

(A) The American Board of Vocational Experts.

(B) The Commission on Rehabilitation Counselor Certification.

(C) The Commission on Disability Management Specialists Certification.

(D) The National Board of Certified Counselors.

(E) Other Nationally recognized professional organizations, published by the Department in the *Pennsylvania Bulletin*.

(ii) One year experience in analyzing labor market information and conditions, industrial and occupational trends, with primary duties providing actual vocational rehabilitation services, which include the following:

(A) Job seeking skills.

(B) Job development.

(C) Job analysis.

(D) Career exploration.

(E) Placement of individuals with disabilities.

(F) Vocational testing and assessment.

(2) Certification by a Nationally recognized professional organization specified in paragraph (1)(i) under the direct supervision of an individual possessing the criteria in paragraph (1).

(3) Possession of a Bachelor's degree or a valid license issued by the Department of State's Bureau of Professional and Occupational Affairs, as long as the individual is under the direct supervision of an individual possessing the criteria in paragraph (1).

(4) At least 5 years experience primarily in the workers' compensation field prior to August 23, 1996, as a vocational evaluator, with experience in analyzing labor market information and conditions, industrial and occupational trends, with primary duties providing actual vocational rehabilitation services, which include, but are not limited to, the following:

(i) Job seeking skills.

(ii) Job development.

(iii) Job analysis.

(iv) Career exploration.

(v) Placement of individuals with disabilities.

(b) Individuals meeting the minimum qualifications under subsection (a) are approved to conduct earning power assessment interviews under section 449 of the act (77 P. S. § 1000.5).

Source

The provisions of this § 123.202 adopted January 16, 1998, effective January 17, 1998, 28 Pa.B. 329; amended July 13, 2001, effective July 14, 2001, 31 Pa.B. 3841; amended June 22, 2007, effective June 23, 2007, 37 Pa.B. 2804. Immediately preceding text appears at serial pages (309341) to (309342).

Cross References

This section cited in 34 Pa. Code § 123.203 (relating to role of workers' compensation judges).

§ 123.202a. Qualifications for vocational experts under Act 53 of 2003.

(a) This section applies to individuals who, before June 23, 2007, have not conducted earning power assessment interviews under section 306(b) of the act (77 P. S. § 512). These individuals meet the minimum qualifications established under section 306(b) if they possess both:

(1) Certification by one of the following Nationally recognized professional organizations:

- (i) The American Board of Vocational Experts.
- (ii) The Commission on Rehabilitation Counselor Certification.
- (iii) The Commission on Disability Management Specialists Certification.
- (iv) Other Nationally recognized professional organizations, published by the Department in the *Pennsylvania Bulletin*.

(2) A bachelor's or postgraduate degree in rehabilitation counseling or a related counseling field.

(b) Individuals meeting the minimum qualifications under subsection (a) are approved to conduct earning power assessment interviews under section 449 of the act (77 P. S. § 1000.5).

Source

The provisions of this § 123.202a adopted June 22, 2007, effective June 23, 2007, 37 Pa.B. 2804.

Cross References

This section cited in 34 Pa. Code § 123.203 (relating to role of workers' compensation judges).

§ 123.203. Role of workers' compensation judges.

(a) A workers' compensation judge will resolve disputes regarding whether a vocational expert meets the minimum qualifications established in §§ 123.202 and 123.202a (relating to qualifications for current vocational experts under Act 57 of 1996; and qualifications for vocational experts under Act 53 of 2003).

(b) Except as set forth in subsection (c), this subchapter does not limit a workers' compensation judge's authority to determine a vocational expert's qualifications under §§ 123.202 and 123.202a or a vocational expert's bias or objectivity.

(c) A workers' compensation judge may not consider the results of an earning power assessment interview if the workers' compensation judge finds that the vocational expert has not complied with § 123.204 (relating to conduct of vocational experts) or that the insurer has not complied with § 123.205 (relating to financial interest disclosure).

Source

The provisions of this § 123.203 adopted January 16, 1998, effective January 17, 1998, 28 Pa.B. 329; amended June 22, 2007, effective June 23, 2007, 37 Pa.B. 2804. Immediately preceding text appears at serial page (309342).

§ 123.204. Conduct of vocational experts.

(a) Before conducting an earning power assessment interview, the vocational expert shall disclose to the employee, in writing, the role and limits of the vocational expert's relationship with the employee.

(b) A vocational expert who conducts an earning power assessment interview shall generate a written initial report detailing the expert's involvement in the litigation and conclusions from the interview. The initial report need not contain the results or conclusions of any surveys or tests. The vocational expert shall serve a copy of the initial report on the employee and counsel, if known, within 30 days of the date of the interview.

(c) A vocational expert who authors additional written reports, including earning power assessments or labor market surveys, shall simultaneously serve copies of these written reports upon the employee and counsel, if known, when the expert provides the written reports to the insurer or its counsel.

(d) A vocational expert who satisfies the requirements of this section complies with the Code of Professional Ethics for Rehabilitation Counselors pertaining to the conduct of expert witnesses for purposes of section 306(b)(2) of the act (77 P. S. § 512(2)).

Source

The provisions of this § 123.204 adopted June 22, 2007, effective June 23, 2007, 37 Pa.B. 2804.

Cross References

This section cited in 34 Pa. Code § 123.203 (relating to role of workers' compensation judges).

§ 123.205. Financial interest disclosure.

(a) For the purposes of this section, a third-party administrator or another entity that performs services on behalf of an insurer, as specified in section 441(c) of the act (77 P. S. § 997(c)), is an insurer.

(b) Before an insurer refers an employee for an earning power assessment interview, the insurer shall disclose to the employee, in writing, any financial interest the insurer has with the person or entity conducting the earning power assessment interview.

Source

The provisions of this § 123.205 adopted June 22, 2007, effective June 23, 2007, 37 Pa.B. 2804.

Cross References

This section cited in 34 Pa. Code § 123.203 (relating to role of workers' compensation judges).

Subchapter D. EARNING POWER DETERMINATIONS

Sec.

123.301. Employer job offer obligation.

123.302. Evidence of earning power.

§ 123.301. Employer job offer obligation.

(a) For claims for injuries suffered on or after June 24, 1996, if a specific job vacancy exists within the usual employment area within this Commonwealth with

the liable employer, which the employee is capable of performing, the employer shall offer that job to the employee prior to seeking a modification or suspension of benefits based on earning power.

(b) The employer's obligation to offer a specific job vacancy to the employee commences when the insurer provides the notice to the employee required by section 306(b)(3) of the act (77 P. S. § 512(b)(3)) and shall continue for 30 days or until the filing of a Petition for Modification or Suspension, whichever is longer. When an insurer files a Petition for Modification or Suspension which is not based upon a change in medical condition, the employer's obligation to offer a specific job vacancy commences at least 30 days prior to the filing of the petition.

(c) The employer's duty under subsections (a) and (b) may be satisfied if the employer demonstrates facts which may include the following:

(1) The employee was notified of a job vacancy and failed to respond.

(2) A specific job vacancy was offered to the employee, which the employee refused.

(3) The employer offered a modified job to the employee, which the employee refused.

(4) No job vacancy exists within the usual employment area.

(d) When more than one job which the employee is capable of performing becomes available, the employer maintains the right to select which job will be offered to the employee.

(e) The employer's duty under subsections (a) and (b) does not require the employer to hold a job open for a minimum of 30 days. Job offers shall be made consistent with the employer's usual business practice. If the making of job offers is controlled by the provisions of a collective bargaining agreement, the offer shall be made consistent with those provisions.

(f) If the employer has presented evidence that no job vacancy exists, the employee may rebut the employer's evidence by demonstrating facts which may include the following:

(1) During the period in which the employer has or had a duty to offer a specific job, the employer is or was actively recruiting for a specific job vacancy that the employee is capable of performing.

(2) During the period in which the employer has or had a duty to offer a specific job, the employer posted or announced the existence of a specific job vacancy, that the employee is capable of performing, which the employer intends to fill.

(g) A job may not be considered vacant if the employee's ability to fill the position was precluded by any applicable collective bargaining agreement.

Notes of Decisions

Ability to Return to Work Form; Issue Waived

Where the Claimant did not raise before the Board the issue of the employer's failure to provide and complete Notice of Ability to Return to Work Form, the issue was not preserved for appeal and was not considered by the court. *Newhouse v. Workers' Compensation Appeal Board (P. J. Dick/Trumbull Corp.)*, 803 A.2d 828 (Pa. Cmwlth. 2002); appeal denied by 574 Pa. 744, 829 A.2d 311 (2003).

§ 123.302. Evidence of earning power.

For claims for injuries suffered on or after June 24, 1996, an insurer may demonstrate an employee's earning power by providing expert opinion evidence relative to the employee's capacity to perform a job. The evidence shall include job

listings with agencies of the Department, private job placement agencies and advertisements in the usual employment area within this Commonwealth. Partial disability applies if the employe is able to perform his previous work, or can, considering the employe's residual productive skill, education, age and work experience, engage in any other kind of substantial gainful employment in the usual employment area in which the employe lives within this Commonwealth. If the employe does not live within this Commonwealth, the usual employment area where the injury occurred applies.

Subchapter E. COLLECTIVE BARGAINING

Sec.

123.401. Use of ADR systems.

123.402. Forms and filing requirements.

123.403. Effect of creation, continuation and termination of ADR systems.

123.404. Effect and appeal of ADR final determinations.

§ 123.401. Use of ADR systems.

CBAs may provide for the use of an ADR system which may include arbitration, mediation and conciliation, for the resolution of claims for work-related injuries.

§ 123.402. Forms and filing requirements.

(a) If the employer and the recognized or certified and exclusive representative of its employes agree to establish an ADR system, a copy of the portion of the CBA which establishes the ADR system shall be provided to the Governor's Office of Labor-Management Cooperation in the Department.

(b) The standard forms and filing requirements of the act which reflect the voluntary action or agreement of the parties remain in effect for parties participating in an ADR system under section 450 of the act (77 P. S. § 1000.6). The forms exclusively pertaining to filings before a workers' compensation judge are inapplicable to parties participating in an ADR system.

(c) Documents submitted to the Department under this subchapter shall clearly indicate, by notation on the top page of the document, that a section 450 ADR system governs the disposition of the matter.

(d) Final determinations rendered by means of an ADR system shall be documented and a copy of the determination shall be submitted to the parties and to the Department.

§ 123.403. Effect of creation, continuation and termination of ADR systems.

(a) Once established by a CBA, an ADR system shall be the exclusive system for resolving claims for work-related injuries during the existence of the

CBA or longer, if the CBA provides for the continued operation of the ADR system at the expiration of the CBA.

(b) When an ADR system governing a work-related injury is no longer in effect, resolution of claims shall be fully subject to the act, including review by a workers' compensation judge.

§ 123.404. Effect and appeal of ADR final determinations.

(a) Final determinations rendered under an ADR system are binding and enforceable.

(b) Appeals from determinations rendered under an ADR system are limited to those made under the conditions specified by 42 Pa.C.S. § 7314 (relating to vacating award by court).

Subchapter F. EMPLOYEE REPORTING AND VERIFICATION REQUIREMENTS

Sec.

123.501. Reporting requirement.

123.502. Verification.

§ 123.501. Reporting requirement.

An insurer shall notify the employe of the employe's reporting requirements under sections 204 and 311.1(a) and (d) of the act (77 P. S. §§ 71 and 631.1(a) and (d)). In addition, the insurer shall provide the employe with the forms required to fulfill the employe's reporting and verification requirements under section 311.1(d) of the act.

§ 123.502. Verification.

(a) Insurers may submit Form LIBC-760, "Employee Verification of Employment, Self-employment or Change in Physical Condition," to the employe and employe's counsel, if known, to verify, no more than once every 6 months, that the status of the employe's entitlement to receive compensation has not changed.

(b) Form LIBC-760 shall be delivered to the employe in person or consistent with section 406 of the act.

(c) The employe shall complete and return form LIBC-760 to the insurer within 30 days of receipt of the form.

(d) If the employe fails to comply with subsection (c), the insurer may suspend payments of wage-loss benefits until Form LIBC-760 is returned by the employe.

(e) To suspend payments of compensation due to the employe's failure to comply with subsection (c), the insurer shall provide written notice to the

employee, the employee's counsel, if known, and the Department, on Form LIBC-762, "Notice of Suspension for Failure to Return Form LIBC-760 (Employee Verification of Employment, Self-employment or Change in Physical Condition)" of the following:

(1) The workers' compensation benefits have been suspended because of the employee's failure to return the verification form within the 30-day statutorily prescribed time period.

(2) The workers' compensation benefits shall be reinstated by the insurer, effective upon receipt of the completed verification form.

(3) The employee has the right to challenge the suspension of benefits by filing a petition for reinstatement with the Department.

(f) Upon receipt of the completed verification form, the insurer shall reinstate the workers' compensation benefits for which the employee is eligible. The insurer shall provide written notice to the employee, employee's counsel, if known, and the Department, on Form LIBC-763, "Notice of Reinstatement of Workers' Compensation Benefits," that the employee's workers' compensation benefits have been reinstated due to the return of the completed verification form. The notice shall further indicate the date the verification form was received by the insurer and the date of reinstatement of the workers' compensation benefits.

(g) Employees are not entitled to payments of workers' compensation during periods of noncompliance with subsection (c).

Notes of Decisions

Suspension of Benefits

Suspension of benefits for failure to comply with the requirement to file a verification, does not constitute an impermissible automatic supersedeas. Suspension is appropriate; however, benefits should be reinstated upon compliance. Reinstatement requires payment of benefits from the date of reinstatement, and not retroactively to the date of suspension. *Farance v. Workers' Compensation Appeal Board*, 774 A.2d 785 (Pa. Cmwlth. 2001), appeal denied 788 A.2d 380 (Pa. 2001).

Subchapter G. INFORMAL CONFERENCE

Sec.

123.601. Representation of corporation at informal conference.

§ 123.601. Representation of corporation at informal conference.

Each party may be represented at the informal conference conducted under section 402.1 of the act (77 P. S. § 711.1), but the employer may only be represented by an attorney at the informal conference if the employee is also represented by an attorney. When the employee is not represented at the informal conference, an employer may be represented by an agent or other representative, other than an attorney, at the informal conference.

Subchapter H. USE OF OPTICALLY SCANNED DOCUMENTS

Sec.
123.701. Use of optically scanned documents.

§ 123.701. Use of optically scanned documents.

(a) The Bureau may optically scan original documents, or make other images or paper copies which accurately reproduce the originals, and may dispose of originals so copied.

(b) Copies made under this section, and certified by the custodian of records for the Bureau, are admissible in evidence in a proceeding with the same effect as though they were an original.

**Subchapter I. UNINSURED EMPLOYER GUARANTY FUND—
STATEMENT OF POLICY**

Sec.
123.801. Uninsured Employer Guaranty Fund.
123.802. Notice to the Uninsured Employer Guaranty Fund.
123.803. Prerequisites for filing claim petition for benefits from Fund.
123.804. Filing of claim petition for benefits from the Fund.
123.805. Rights of Fund.

Source

The provisions of this Subchapter I adopted January 19, 2007, effective January 20, 2007, 37 Pa.B. 317, unless otherwise indicated.

§ 123.801. Uninsured Employer Guaranty Fund.

The Department of Labor and Industry (Department) adopts this statement of policy so that all parties will have a clear understanding of their rights and obligations under the act, as amended by Act 147 of 2006 (P. L. 1362, No. 147) (Act 147). This subchapter does not constitute a rule or regulation with the force and effect of law. The Department intends to promulgate regulations for this purpose as soon as practicable.

§ 123.802. Notice to the Uninsured Employer Guaranty Fund.

(a) For purposes of Article XVI of the act (77 P. S. §§ —), an injured worker who seeks benefits from the Uninsured Employer Guaranty Fund (Fund) shall notify the Fund of a claim within 45 days from the date upon which the injured worker knew that the employer was uninsured.

(b) Compensation will not be paid from the Fund until notice is given.

(c) Notice to the Fund shall consist of completing and mailing the form designated as "Notice of Claim Against Uninsured Employer" (Notice) to the

Department of Labor and Industry (Department) at the address listed on the form. The Department may reject any incomplete Notice.

(d) The Notice will be deemed filed as of the date of the Notice's deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid. If a United States Postal Service Postmark is not present, the date of the Department's actual receipt of the Notice is the filing date.

Cross References

This section cited in 34 Pa. Code § 123.803 (relating to prerequisites for filing claim petition for benefits from fund); and 34 Pa. Code § 123.804 (relating to filing of claim petition for benefits from the fund).

§ 123.803. Prerequisites for filing claim petition for benefits from Fund.

(a) Upon the filing of a completed "Notice of Claim Against Uninsured Employer" (Notice), the Uninsured Employer Guaranty Fund (Fund) will determine whether it will commence making payments.

(b) An injured worker may not seek an award against the Fund unless the worker completes and files the form designated as the "Claim Petition for Benefits from the Uninsured Employer Guaranty Fund."

(c) A "Claim Petition for Benefits from the Uninsured Employer Guaranty Fund" may not be filed until at least 21 days after the injured worker filed the Notice as required in § 123.802 (relating to notice to the Uninsured Employer Guaranty Fund).

(d) A completed "Claim Petition for Benefits from the Uninsured Employer Guaranty Fund" will be deemed filed upon the later of either of the following:

- (1) The date of the petition's deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid; or, if no United States Postal Service Postmark is present, as of the Department's receipt of the petition.
 - (2) Twenty-one days after the filing of the Notice identified in § 123.802.
- (e) The Department may reject any incomplete petition.

§ 123.804. Filing of claim petition for benefits from the Fund.

(a) If an injured worker attempts to file a "Claim Petition for Benefits from the Uninsured Employer Guaranty Fund" before filing the "Notice of Claim Against Uninsured Employer" (Notice) required under § 123.802 (relating to notice to the Uninsured Employer Guaranty Fund), the Department will return the petition to the injured worker and instruct the worker to complete a Notice.

(b) A Claim Petition for Workers' Compensation (LIBC—362) filed against an employer may not act as a claim against the Uninsured Employer Guaranty Fund (Fund) or be deemed notice to the Fund.

(c) An injured worker seeking an award of benefits from the Fund shall file the "Claim Petition for Benefits from the Uninsured Employer Guaranty Fund" with the Bureau and shall serve the Fund and the alleged employer at the addresses identified on the petition. The Fund is not required to answer a petition which does not conform to this section.

§ 123.805. Rights of Fund.

The Uninsured Employer Guaranty Fund (Fund) is not prejudiced by an agreement, admission or stipulation concerning the compensability, facts or legal conclusions relating to an injury underlying a claim against the Fund unless the Fund is a party to and specifically endorses the agreement, admission or stipulation.

[Next page is 125-1.]