

AN ACT
RELATING TO WORKERS' COMPENSATION; CHANGING THE BENEFITS
COMPUTATION FOR PARTIAL DISABILITY; CHANGING PROVISIONS
RELATING TO ALCOHOL OR DRUG USE INVOLVEMENT IN AN INJURY;
CHANGING THE VENUE OF HEARINGS; MAKING CERTAIN WORKERS'
COMPENSATION ADMINISTRATION RECORDS OPEN TO THE PUBLIC;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new Section 52-1-12.1 NMSA 1978 is
enacted to read:

"52-1-12.1. REDUCTION IN COMPENSATION WHEN ALCOHOL OR
DRUGS CONTRIBUTE TO INJURY OR DEATH. --The compensation
otherwise payable a worker pursuant to the Workers'
Compensation Act shall be reduced ten percent in cases in
which the injury to or death of a worker is not occasioned
by the intoxication of the worker as stated in Section 52-1-
11 NMSA 1978 or occasioned solely by drug influence as
described in Section 52-1-12 NMSA 1978, but voluntary
intoxication or being under the influence of a depressant,
stimulant or hallucinogenic drug as defined in the New
Mexico Drug, Device and Cosmetic Act or under the influence
of a narcotic drug as defined in the Controlled Substances
Act, unless the drug was dispensed to the person upon the
prescription of a practitioner licensed by law to prescribe
the drug or administered to the person by any person

authorized by a licensed practitioner to administer the drug, is a contributing cause to the injury or death. Test results used as evidence of intoxication or drug influence shall not be considered in making a determination of intoxication or drug influence unless the test and testing procedures conform to the federal department of transportation "procedures for transportation workplace drug and alcohol testing programs" and the test is performed by a laboratory certified to do the testing by the federal department of transportation."

Section 2. Section 52-1-26.2 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 13) is amended to read:

"52-1-26.2. PARTIAL DISABILITY DETERMINATION--AGE MODIFICATION.--

A. The range of the age modification is one to five. The modification is based upon the worker's age at the time of the disability rating.

B. For a worker who is:

(1) forty-four years old or younger, one point shall be awarded;

(2) forty-five to forty-nine years old, two points shall be awarded;

(3) fifty to fifty-four years old, three points shall be awarded;

(4) fifty-five to fifty-nine years old, four points shall be awarded; and

(5) sixty years old or older, five points shall be awarded. "

Section 3. Section 52-1-26.3 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 14) is amended to read:

"52-1-26.3. PARTIAL DISABILITY DETERMINATION--
EDUCATION MODIFICATION. --

A. The range of the education modification is one to eight. The modification shall be based upon the worker's formal education, skills and training at the time of the disability rating.

B. A worker shall be awarded points based on the formal education he has received. A worker who:

(1) has completed no higher than the fifth grade shall be awarded three points;

(2) has completed the sixth grade but has completed no higher than the eleventh grade shall be awarded two points;

(3) has completed the twelfth grade or has obtained a GED certificate but has not completed a college degree shall be awarded one point; and

(4) has completed a college degree or more shall receive zero points.

C. A worker shall be awarded points based upon his skills. Skills shall be measured by reviewing the jobs he has successfully performed during the ten years preceding the date of disability determination. For the purposes of

this section, "successfully performed" means having remained on the job the length of time necessary to meet the specific vocational preparation (SVP) time requirement for that job as established in the dictionary of occupational titles published by the United States department of labor. The appropriate award of points shall be based upon the highest SVP level demonstrated by the worker in the performance of the jobs he has successfully performed in the ten-year period preceding the date of disability determination, as follows:

(1) a worker with an SVP of one to two shall be awarded four points;

(2) a worker with an SVP of three to four shall be awarded three points;

(3) a worker with an SVP of five to six shall be awarded two points; and

(4) a worker with an SVP of seven to nine shall be awarded one point.

D. A worker shall be awarded points based upon the training he has received. A worker who cannot competently perform a specific vocational pursuit shall be awarded one point. A worker who can perform a specific vocational pursuit shall not receive any points.

E. The sum of the points awarded the worker in Subsections B, C and D of this section shall constitute the education modification. "

Section 4. Section 52-5-6 NMSA 1978 (being Laws 1986, Chapter 22, Section 32, as amended) is amended to read:

"52-5-6. AUTHORITY OF THE DIRECTOR TO CONDUCT HEARINGS. --

A. Hearings shall be held in the county in which the injury or disablement occurred for which the claim is being made unless the parties agree otherwise. Upon motion of a party, or upon his own motion, if he finds that good cause exists, the workers' compensation judge may order the hearing to be held in the workers' compensation administration regional office located nearest to the county in which the injury or disablement occurred or in the county identified as being in the best interests of the parties, taking into consideration cost-effectiveness, judicial efficiency, the health and mobility of the employee and the convenience of parties and witnesses.

B. The workers' compensation judge shall have the power to preserve and enforce order during hearings; administer oaths; issue subpoenas to compel the attendance and testimony of witnesses, the production of books, papers, documents and other evidence or the taking of depositions before a designated individual competent to administer oaths; examine witnesses; enter noncriminal sanctions for misconduct; and do all things conformable to law which may be necessary to enable him to discharge the duties of his office effectively.

C. In addition to the noncriminal sanctions that may be ordered by the workers' compensation judge, any person committing any of the following acts in a proceeding before a workers' compensation judge may be held accountable for his conduct in accordance with the provisions of Subsection D of this section:

- (1) disobedience of or resistance to any lawful order or process;
- (2) misbehavior during a hearing or so near the place of the hearing as to obstruct it;
- (3) failure to produce any pertinent book, paper or document after having been ordered to do so;
- (4) refusal to appear after having been subpoenaed;
- (5) refusal to take the oath or affirmation as a witness; or
- (6) refusal to be examined according to law.

D. The director may certify to the district court of the district in which the acts were committed the facts constituting any of the acts specified in Paragraphs (1) through (6) of Subsection C of this section. The court shall hold a hearing and if the evidence so warrants may punish the offending person in the same manner and to the same extent as for contempt committed before the court, or it may commit the person upon the same conditions as if the

doing of the forbidden act had occurred with reference to the process of or in the presence of the court."

Section 5. Section 52-5-21 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 65) is amended to read:

"52-5-21. ADMINISTRATION RECORDS CONFIDENTIALITY-- AUTHORIZED USE.--Except as otherwise provided in this section, unless introduced as evidence in an administrative or judicial proceeding or filed with the clerk of the court as part of an enforcement or compliance proceeding, all records of the administration shall be confidential. Once an accident or disablement occurs, any person who is a party to a claim upon that accident or disablement is entitled to access to all files relating to that accident or disablement and to all files relating to any prior accident, injury or disablement of the worker. Upon the filing of a rejection of a recommended resolution, all records filed with the clerk of the court as part of the judicial proceeding shall be open to the public."

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001. _____