

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4977

To change the appeals process in the workers' compensation provisions of title 5, United States Code.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 17, 1994

Mr. KREIDLER (for himself, Mr. MURPHY, Mr. FRANK of Massachusetts, Mr. BARLOW, Mr. MARTINEZ, Mr. OBERSTAR, Mr. JACOBS, Mrs. UNSOELD, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. TORRES, Mr. VENTO, Mr. WYDEN, Mr. SYNAR, and Mr. JOHNSTON of Florida) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To change the appeals process in the workers' compensation provisions of title 5, United States Code.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. APPEALS PROCESS.**

4 (a) REFERENCE.—Whenever in this section an  
5 amendment or repeal is expressed in terms of an amend-  
6 ment to, or repeal of, a section or other provision, the ref-  
7 erence shall be considered to be made to a section or other  
8 provision of title 5, United States Code.

1 (b) TIME PERIOD FOR DECISION.—Section 8118 is  
2 amended by adding at the end the following:

3 “(f) A final decision by the agency which first receives  
4 a claim shall be made within 90 days of the date the claim  
5 is received by the agency. If a final decision on a claim  
6 is not made within such 90 days, the claimant shall be  
7 authorized continuation of pay under section 8118 from  
8 the date compensation benefits were terminated until a  
9 final decision is made on such claim.”.

10 (c) CLAIMANT’S PHYSICIAN.—Section 8123(a) is  
11 amended by adding at the end the following: “The Sec-  
12 retary shall provide the claimant’s physician with the same  
13 opportunity and information as was provided to the physi-  
14 cian acting for the Secretary, including the statement of  
15 accepted facts and all medical information in the claim-  
16 ant’s file.”.

17 (d) PHYSICIAN FEES.—Section 8123(c) is amended  
18 by adding at the end the following: “The fees paid to phy-  
19 sicians acting for the Secretary shall not exceed the fees  
20 paid for the claimant’s physicians. The claimant’s physi-  
21 cian and bills for medical services provided the claimant  
22 shall be paid within 60 days of the submission of an ap-  
23 proved claim.”.

24 (e) HEARING DATE.—Section 8124(b)(1) is amend-  
25 ed—

1           (1) by adding after the first sentence the follow-  
2           ing: “The hearing shall be held within 90 days of  
3           the date the request for a hearing is received by the  
4           Secretary.”, and

5           (2) by adding at the end the following: “If the  
6           Secretary does not hold a hearing within 90 days of  
7           the date the hearing is requested or if the Secretary  
8           does not issue a further decision within 30 days  
9           after the hearing ends, the compensation benefits for  
10          any claimant challenging a suspension, termination,  
11          or reduction in benefits shall be reinstated from the  
12          date such benefits were terminated until such time  
13          as a decision has been made.”.

14          (f) CONDUCT OF HEARING.—

15           (1) ADMINISTRATIVE LAW JUDGES.—Section  
16          8124(b)(1) is amended by striking “on his claim be-  
17          fore a representative of the Secretary.” and inserting  
18          a period and the following: “The hearing shall be  
19          conducted by administrative law judges of the De-  
20          partment of Labor.”

21           (2) CLAIMANT’S AUTHORITY.—Paragraph (2) of  
22          section 8124(b) is amended to read as follows:

23          “(2) In conducting the hearing the Secretary shall  
24          follow the requirements of chapter 5 of part I. The claim-  
25          ant shall have the right to confront and cross examine all

1 adverse witnesses and present such evidence as the claim-  
2 ant feels necessary for consideration of the claim. The  
3 claimant's employer shall not be present at the hearing  
4 but shall be provided an opportunity to comment on the  
5 transcript of the hearing.”.

6 (g) APPEALS.—Section 8124 is amended—

7 (1) in subsection (a), by adding after and below  
8 paragraph (2) the following: “After a decision has  
9 been made by the Secretary on a claim under this  
10 subsection there shall be no further administrative  
11 proceedings on the claim. The claimant may make  
12 an appeal for judicial review of the Secretary's deci-  
13 sion within 90 days of the date the decision is re-  
14 ceived by the claimant in accordance with chapter 7  
15 of part I.”, and

16 (2) by adding at the end the following:

17 “(c) After a decision has been made by the Secretary  
18 after a hearing on a claim there shall be no further admin-  
19 istrative proceedings on the claim. The claimant may  
20 make an appeal for judicial review in accordance with  
21 chapter 7 of part I.”.

22 (h) ATTORNEYS' FEES.—Section 8127 is amended by  
23 adding at the end the following:

24 “(c) Except as provided in subsection (d), claimant's  
25 attorney or representative shall be entitled to receive a fee

1 of 25 percent of the benefits awarded to the claimant or  
2 \$5,000, whichever is less. The Secretary shall take such  
3 action as may be necessary to assure that payment is  
4 made directly to the attorney.

5 “(d) If the claimant prevails in a decision of a Fed-  
6 eral court under chapter 7 of part I, the claimant’s attor-  
7 ney shall be paid by the Secretary, but not from the claim-  
8 ant’s award, for the work of such attorney if the position  
9 of the Secretary with respect to such claimant was found  
10 under section 2412(c) of title 28 to be not substantially  
11 justified.”

12 (i) REVIEW OF AWARD.—Section 8128 is amended  
13 by striking out subsection (b) and by striking out “(a)”  
14 in subsection (a).

15 (j) MORTGAGEES AND OTHER SECURED CREDI-  
16 TORS.—Section 8130 is amended by adding at the end the  
17 following: “If a mortgagee or other secured creditor of the  
18 primary residential dwelling of a claimant agrees to fore-  
19 bear foreclosure or forfeiture of such dwelling until a final  
20 decision is rendered on the claim of the claimant under  
21 this chapter, the claimant may give security under rules  
22 promulgated by the Secretary to ensure direct payment  
23 from the approved award of the Secretary on such claim  
24 to such mortgagee or other secured creditor for all delin-  
25 quent payments, including interest. The Secretary shall

1 not pay, and no liens shall be given, for attorneys' fees,  
2 recording costs, penalty clauses, or other charges other  
3 than delinquent payments, including interest, to such  
4 mortgagee or other secured creditor. No mortgagee or  
5 other secured creditor may hold a lien on the claimant's  
6 primary residential dwelling for any amount in addition  
7 to claimant's delinquent payments, including interest."

8 (k) SUBROGATIONS AND ADJUSTMENTS.—Section  
9 8132 is amended by adding at the end the following: "In  
10 no case shall a subrogation secured under section 8131  
11 or an adjustment after recovery made under this section  
12 exceed the amount the claimant received in an action  
13 brought against a person other than the United States for  
14 lost wages and medical expenses. In a subrogation under  
15 section 8131, the Secretary may not bring an action for  
16 loss of consortium or other compensatory or punitive dam-  
17 ages other than damages for lost wages and medical  
18 expenses."

19 (l) EMPLOYEE'S COMPENSATION APPEALS BOARD.—  
20 Section 8149 is amended by striking out the second  
21 sentence.

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