

§ 702.251

20 CFR Ch. VI (4-1-01 Edition)

Act, 33 U.S.C. 908(i), until a complete application is received.

(b) The adjudicator shall consider the settlement application within thirty days and either approve or disapprove the application. The liability of an employer/insurance carrier is not discharged until the settlement is specifically approved by a compensation order issued by the adjudicator. However, if the parties are represented by counsel, the settlement shall be deemed approved unless specifically disapproved within thirty days after receipt of a complete application. This thirty day period does not begin until all the information described in §702.242 has been submitted. The adjudicator shall examine the settlement application within thirty days and shall immediately serve on all parties notice of any deficiency. This notice shall also indicate that the thirty day period will not commence until the deficiency is corrected.

(c) If the adjudicator disapproves a settlement application, the adjudicator shall serve on all parties a written statement or order containing the reasons for disapproval. This statement shall be served by certified mail within thirty days of receipt of a complete application (as described in §702.242.) if the parties are represented by counsel. If the disapproval was made by a district director, any party to the settlement may request a hearing before an ALJ as provided in sections 8 and 19 of the Act, 33 U.S.C. 908 and 919, or an amended application may be submitted to the district director. If, following the hearing, the ALJ disapproves the settlement, the parties may: (1) Submit a new application, (2) file an appeal with the Benefits Review Board as provided in section 21 of the Act, 33 U.S.C. 921, or (3) proceed with a hearing on the merits of the claim. If the application is initially disapproved by an ALJ, the parties may (1) submit a new application or (2) proceed with a hearing on the merits of the claim.

(d) The parties may submit a settlement application solely for compensation, or solely for medical benefits or for compensation and medical benefits combined.

(e) If either portion of a combined compensation and medical benefits set-

tlement application is disapproved the entire application is disapproved unless the parties indicate on the face of the application that they agree to settle either portion independently.

(f) When presented with a settlement, the adjudicator shall review the application and determine whether, considering all of the circumstances, including, where appropriate, the probability of success if the case were formally litigated, the amount is adequate. The criteria for determining the adequacy of the settlement application shall include, but not be limited to:

(1) The claimant's age, education and work history;

(2) The degree of the claimant's disability or impairment;

(3) The availability of the type of work the claimant can do;

(4) The cost and necessity of future medical treatment (where the settlement includes medical benefits).

(g) In cases being paid pursuant to a final compensation order, where no substantive issues are in dispute, a settlement amount which does not equal the present value of future compensation payments commuted, computed at the discount rate specified below, shall be considered inadequate unless the parties to the settlement show that the amount is adequate. The probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current United States Life Table, as developed by the United States Department of Health and Human Services, which shall be updated from time to time. The discount rate shall be equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 weeks U.S. Treasury Bills settled immediately prior to the date of the submission of the settlement application.

[50 FR 399, Jan. 3, 1985, as amended at 51 FR 4284, Feb. 3, 1986; 60 FR 51348, Oct. 2, 1995]

CONTROVERTED CLAIMS

§ 702.251 Employer's controversion of the right to compensation.

Where the employer controverts the right to compensation after notice or

knowledge of the injury or death, or after receipt of a written claim, he shall give notice thereof, stating the reasons for controverting the right to compensation, using the form prescribed by the Director. Such notice, or answer to the claim, shall be filed with the district director within 14 days from the date the employer receives notice or has knowledge of the injury or death. The original notice shall be sent to the district director having jurisdiction, and a copy thereof shall be given or mailed to the claimant.

(Approved by the Office of Management and Budget under control number 1215-0023)

(Pub. L. No. 96-511)

[38 FR 26861, Sept. 26, 1973, as amended at 49 FR 18294, Apr. 30, 1984]

§ 702.252 Action by district director upon receipt of notice of controversion.

Upon receiving the employer's notice of controversion, the district director shall forthwith commence proceedings for the adjudication of the claim in accordance with the procedures set forth in subpart C of this part.

CONTESTED CLAIMS

§ 702.261 Claimant's contest of actions taken by employer or carrier with respect to the claim.

Where the claimant contests an action by the employer or carrier reducing, suspending, or terminating benefits, including medical care, he should immediately notify the office of the district director having jurisdiction, in person or in writing, and set forth the facts pertinent to his complaint.

§ 702.262 Action by district director upon receipt of notice of contest.

Upon receipt of the claimant's notice of contest, the district director shall forthwith commence proceedings for adjudication of the claim in accordance with the procedures set forth in subpart C of this part.

DISCRIMINATION

§ 702.271 Discrimination; against employees who bring proceedings, prohibition and penalty.

(a)(1) No employer or its duly authorized agent may discharge or in any manner discriminate against an employee as to his/her employment because that employee: (i) Has claimed or attempted to claim compensation under this Act; or (ii) has testified or is about to testify in a proceeding under this Act. To discharge or refuse to employ a person who has been adjudicated to have filed a fraudulent claim for compensation or otherwise made a false statement or misrepresentation under section 31(a)(1) of the Act, 33 U.S.C. 931(a)(1), is not a violation of this section.

(2) Any employer who violates this section shall be liable to a penalty of not less than \$1,000.00 or more than \$5,000.00 to be paid (by the employer alone, and not by a carrier) to the district director for deposit in the special fund described in section 44 of the Act, 33 U.S.C. 944; and shall restore the employee to his or her employment along with all wages lost due to the discrimination unless the employee has ceased to be qualified to perform the duties of employment. *Provided however*, that for any violation occurring on or after November 17, 1997 the employer shall be liable to a penalty of not less than \$1,100.00 or more than \$5,500.00.

(b) When a district director receives a complaint from an employee alleging discrimination as defined under section 49, he or she shall notify the employer, and within five working days, initiate specific inquiry to determine all the facts and circumstances pertaining thereto. This may be accomplished by interviewing the employee, employer representatives and other parties who may have information about the matter. Interviews may be conducted by written correspondence, telephone or personal interview.