

Section 300.23 of Title 12 NYCRR is hereby amended to read as follows:

(a) In any case where the carrier or employer has made payment without waiting for an award by the board, the filing of a form C-8/8.6 with the chair[man] by a carrier or an employer is not authority to suspend or reduce payments of compensation [for temporary or permanent disability in an open and pending claim] unless there accompanies it supporting evidence that the suspension or reduction of payment is in order, such as:

(1) a copy of the payroll report if the compensation rate is not based on information contained in the C-2 and is below the maximum;

(2) medical or other reports (including notice of return to work) justifying the suspension or reduction of payments, or by indicating on such notice the name and date of the medical or other reports, if they have been previously filed[.] ; or

(3) proof of incarceration upon conviction of a felony, which allows for the suspension of both wage replacement benefits and payment for causally related medical treatment.

(b) In [an] any [open] case where [an award has been made for temporary or permanent disability] the board has made an award of compensation for a temporary total or temporary partial disability at an established rate of compensation, and there is a direction for continuation of payments, the employer or carrier shall continue payments at such rate [beyond the period covered by the award], and such payments shall not be suspended or reduced until:

(1) there is filed with the [chairman] chair in the district office where the case is [pending] assigned, a notice of intention to suspend or reduce on a prescribed form accompanied by supporting evidence justifying such suspension or reduction together with proof of mailing of copies thereof upon the claimant, his/her doctor and his/her representative, and,

(2) the [chairman] chair, upon receipt of above, has scheduled a hearing or meeting or conference on the issue within 20 days during any period when regular hearings or meetings or conferences are scheduled, and

there is a [determination by the referee and] finding that such suspension or reduction is justified. At said hearing or meeting or conference, if either party fails to appear or fails to submit any evidence as to the above issue, the [Workers' Compensation Law judge] board shall take such action as [he or she deems proper] is appropriate under the circumstances including continuation, suspension or reduction of the award. Cases at hearing points which do not have regularly scheduled hearings or meetings or conferences within the 20 days, may be scheduled at another available hearing point.

(3) Notwithstanding any provision to the contrary in this subdivision, the employer or carrier upon the filing of a form C-8/8.6 may suspend or reduce such payments:

(i) where a notice of return to work (form C-11), or other written substantial legal evidence of claimant's return to work, has been filed with the [chairman] chair, or

(ii) where the supporting evidence submitted therewith includes payroll records for at least two calendar weeks which warrant such suspension or reduction, or

(iii) where the claimant's medical evidence indicates that the claimant has no disability[.] or

(iv) where supporting evidence submitted therewith includes proof of incarceration upon conviction of a felony.

(c) (1) In any [closed] case where the board has made an award for compensation [has been made] for permanent total or permanent partial disability, payments shall not be suspended or modified until an application on a prescribed form[,] accompanied by supporting evidence, is made [to reopen the claim] to reconsider the degree of impairment or wage-earning capacity together with proof of mailing of copies thereof upon the claimant, his/her doctor and his/her representative and [there has been] the board has made a final determination of such application [by the board], finding that such suspension or modification is justified; provided, however, that if such supporting evidence includes [payrolls] payroll records which show earnings for at least eight weeks immediately prior to the date of the application which warrant modification of the rate fixed

and evidence identifying the claimant as the person whose [payrolls] payroll records are being submitted, the employer or carrier shall continue to pay compensation at such modified rate as the evidence submitted indicates is proper, or may suspend payments if the evidence submitted supports such suspension, pending final determination of the application by the board.

(2) Notwithstanding any provision to the contrary in this subdivision, the employer or carrier may stop, suspend or reduce such payments:

(i) where supporting evidence includes proof of incarceration upon conviction of a felony, or

(ii) where compensation payable for permanent partial disability has reached the maximum benefit weeks allowed pursuant to Workers' Compensation Law Section 15(3)(w).

In either of the above circumstances, the employer or carrier must file form C-8/8.6 with the board within sixteen days of stopping such payments in accordance with Workers' Compensation Law Section 25(1)(d).

(3) Payment of death benefits shall not be suspended unless an application on a prescribed form [to reopen the claim] is made, accompanied by supporting evidence, and the board approves such suspension.

(d) Whenever an employer or carrier shall terminate medical care or refuse authorization for special medical services, prescribed form C-8.1Part A, [Notice of Termination of Care or Refusal of Authorization] Notice of Treatment Issues(s)/Disputed Bill Issue(s), shall be completed and filed with the [chairman] chair within five days after such termination or refusal, together with:

(1) medical report by authorized physician that need for medical care has ended;

(2) copy of notice to claimant's physician to discontinue medical care, or to refrain from commencing medical care, together with report of authorized physician establishing basis of discontinuance or refusal; and

(3) proof of mailing notice under paragraph (2) of this subdivision to the claimant and his physician.

(e) In any case in which a penalty has been imposed arising out of the failure to make payment of compensation according to the terms of the award within 10 days thereafter, the employer or his insurance

carrier must file notice with the [chairman] chair, on board form C-8/8.6, of the payment of such penalty within 10 days after the imposition thereof.

Section 300.35 is added to 12 NYCRR to read as follows:

300.35 Resumption of Benefits upon release from custody

All those whose benefits have ceased by operation of Workers' Compensation Law section 10(4) may apply to the board for resumption of benefits upon their release from custody, by providing notice to the board of release from custody on a request for further action, Form RFA-1, and accompanied by the following information:

(a) proof of release from custody, and

(b) up to date medical evidence where the claimant has not, as of the date of conviction, been classified as permanently partially disabled.