

ACT 162

H.B. NO. 2375

A Bill for an Act Relating to Temporary Disability Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 392-26, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

“§392-26 Care by physician, advanced practice registered nurse, or equivalent required. (a) An individual shall be ineligible to receive temporary disability benefits with respect to any period during which the individual is not under the

care of a person duly licensed to practice medicine, surgery, dentistry, chiropractic, osteopathy, or naturopathic medicine, or an advanced practice registered nurse, who shall certify, in the form and manner specified by [regulation] rule of the director, the disability of the claimant, the probable duration [thereof,] of the disability, and such other medical facts within the person's knowledge as required by [regulation-] rule.”

2. By amending subsection (c) to read:

“(c) The proof of disability duly certified by a person licensed to practice medicine, surgery, dentistry, chiropractic, osteopathy, or naturopathic medicine, or an advanced practice registered nurse, or an authorized or accredited practitioner of any group [which] that depends for healing upon prayer or other spiritual means shall be submitted by [such] the certifying person to the disabled employee within seven working days after the date on which the employee was examined and found disabled. If the certifying person fails to submit the required proof within seven working days, the director, upon notification by the insurer, may levy a penalty of \$25 for each delinquent certification where the certifying person fails to show good cause for the person's failure to file on time.”

SECTION 2. Section 392-51, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§392-51]]~~ **Failure to submit timely wage and employment information.** An employer to whom an insurer has sent a request for information on wages, hours, and duration of employment regarding an employee claiming disability benefits shall complete and submit such information within seven days from the date the request was received. If the employer fails to submit [such] the information within seven days, the director upon notification by the insurer shall levy a penalty of [~~\$10~~] \$250 for each delinquent request where the employer fails to show good cause for failure to file on time.”

SECTION 3. Section 392-72, Hawaii Revised Statutes, is amended to read as follows:

“**§392-72 Appeals, filing, and hearing.** (a) If a person disputes the amount of benefits, paid under part III or part IV, or the denial of benefits, the claimant may file an appeal, in the form and manner prescribed by [regulation] rule of the director, at the office of the department [~~in the county in which the claimant resides or in the county in which the claimant was employed prior to the claimant's disability~~], within twenty days after the date of payment of such disputed benefits or the denial thereof. Notice of the appeal shall be served upon the employer or insurer or the trust fund for disability benefits in the form and manner prescribed by [regulation] rule of the director. Notice of a hearing of an appeal shall be sent by electronic service or by first-class mail to the claimant and insurer or employer or trust fund for disability benefits at least fifteen calendar days prior to the hearing. If notice sent by electronic service or by first-class mail is attempted but not made, and the department has been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by online posting on the department's webpage. The online posting shall appear at least fifteen calendar days prior to the date of the hearing. The online posting shall be removed from the webpage no less than five business days after the date of the hearing.

(b) The appeal [shall] may be heard in [the] any county [in which the appeal is filed; provided that the director may by regulation provide for good cause for the holding of a hearing in another county], and the parties may appear

at the hearing in person, by telephone, or by other communication devices approved by the department, or by a combination of the preceding methods. The parties shall be provided with notice of the hearing and shall be provided with the opportunity to object to the hearing being held in a county other than the county in which the claimant resides or in which the claimant was employed prior to the claimant's disability. Upon such objection, the hearing shall be heard in the county in which the claimant resides or in which the claimant was employed prior to the claimant's disability. Failure of a party to object to the location of the hearing within the time specified in the notice shall be deemed consent by the party to the location of the hearing. The department may provide for the taking of depositions. Unless the appeal is withdrawn with the permission of the referee, the referee after affording the parties reasonable opportunity for a fair hearing shall make findings and conclusions and on the basis thereof affirm, modify, or deny the disputed benefits. In the event any party fails to appear at the hearing, the referee shall issue a decision based on the available information. All parties shall be promptly notified of the decision of the referee and shall be furnished with a copy of the decision and the findings and conclusions in support thereof and the of the decision. The decision shall be final and shall be binding unless a proceeding for judicial review is initiated pursuant to section 392-75; provided that within the time provided for taking an appeal and prior to the filing of a notice of appeal, the referee may reopen the matter, upon application of the director or any party, or upon the referee's own motion, and thereupon may take further evidence or may modify the referee's decision, findings, or conclusions. In the event the matter is reopened, the referee shall render a further decision in the matter, either reaffirming or modifying the referee's original decision, and notice shall be given thereof in the manner hereinbefore provided. The time to initiate judicial review shall run from the notice of such further decision if the matter has been reopened."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 10, 2018.)