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SENATE BILL 100

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO UNEMPLOYMENT INSURANCE; AMENDING A CERTAIN SECTION
OF THE UNEMPLOYMENT COMPENSATION LAW CONCERNING CLAIMS
ADJUDICATION; DECLARING AN EMERGENCY.

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

Section 1. Section 51-1-8 NMSA 1978 (being Laws 1936
(S.S.), Chapter 1, Section 6, as amended) is amended to read:

"51-1-8. CLAIMS FOR BENEFITS. --

A. Claims for benefits shall be made in accordance
with such regulations as the secretary may prescribe. Each
employer shall post and maintain printed notices, in places
readily accessible to employees, concerning their rights to
file claims for unemployment benefits upon termination of their
employment. Such notices shall be supplied by the division to
each employer without cost to ~~him~~ the employer.

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1 B. A representative designated by the secretary as
2 a claims examiner shall promptly examine the application and
3 each weekly claim and, on the basis of the facts found, shall
4 determine whether the claimant is unemployed, the week with
5 respect to which benefits shall commence, the weekly benefit
6 amount payable, the maximum duration of benefits, whether the
7 claimant is eligible for benefits pursuant to Section 51-1-5
8 NMSA 1978 and whether the claimant shall be disqualified
9 pursuant to Section 51-1-7 NMSA 1978. With the approval of the
10 secretary, the claims examiner may refer, without
11 determination, claims or any specified issues involved therein
12 that raise complex questions of fact or law to a hearing
13 officer for the division for a fair hearing and decision in
14 accordance with the procedure described in Subsection D of this
15 section. The claims examiner shall promptly notify the
16 claimant and any other interested party of the determination
17 and the reasons therefor. Unless the claimant or interested
18 party, within fifteen calendar days after the date of
19 notification or mailing of the determination, files an appeal
20 from the determination, the determination shall be the final
21 decision of the division; provided that the claims examiner may
22 reconsider a nonmonetary determination if additional
23 information not previously available is provided or obtained or
24 whenever ~~[he]~~ the claims examiner finds an error in the
25 application of law has occurred, but no redetermination shall

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1 be made more than twenty days from the date of the initial
2 nonmonetary determination. Notice of a nonmonetary
3 redetermination shall be given to all interested parties and
4 shall be subject to appeal in the same manner as the original
5 nonmonetary determination. If an appeal is pending at the time
6 a redetermination is issued, the appeal, unless withdrawn,
7 shall be treated as an appeal from the redetermination.

8 C. In the case of a claim for waiting period credit
9 or benefits, "interested party", for purposes of determinations
10 and adjudication proceedings and notices thereof, means:

11 (1) in the event of an issue concerning a
12 separation from work for reasons other than lack of work, the
13 claimant's most recent employer or most recent employing unit;

14 (2) in the event of an issue concerning a
15 separation from work for lack of work, the employer or
16 employing unit from whom the claimant separated for reasons
17 other than lack of work if ~~he~~ the claimant has not worked and
18 earned wages in insured work or bona fide employment other than
19 self-employment in an amount equal to or exceeding five times
20 ~~his~~ the claimant's weekly benefit amount; or

21 (3) in all other cases involving the allowance
22 or disallowance of a claim, the secretary, the claimant and any
23 employing unit directly involved in the facts at issue.

24 D. Upon appeal by any party, a hearing officer
25 designated by the secretary shall afford the parties reasonable

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1 opportunity for a fair hearing to be held de novo, and the
2 hearing officer shall issue findings of fact and a decision
3 which affirms, modifies or reverses the determination of the
4 claims examiner or tax representative on the facts or the law,
5 based upon the evidence introduced at such hearing, including
6 the documents and statements in the claim or tax records of the
7 division. All hearings shall be held in accordance with
8 regulations of the secretary and decisions issued promptly in
9 accordance with time lapse standards promulgated by the
10 secretary of the United States department of labor. The
11 parties shall be duly notified of the decision, together with
12 the reasons therefor, which shall be deemed to be the final
13 decision of the department, unless within fifteen days after
14 the date of notification or mailing of the decision further
15 appeal is initiated pursuant to Subsection H of this section.

16 E. Except with the consent of the parties, no
17 hearing officer or members of the board of review, established
18 in Subsection F of this section, or secretary shall sit in any
19 administrative or adjudicatory proceeding in which:

20 (1) either of the parties is related to ~~[him]~~
21 the hearing officer, member of the board of review or secretary
22 by affinity or consanguinity within the degree of first cousin;

23 (2) ~~[he]~~ the hearing officer, member of the
24 board of review or secretary was counsel for either party in
25 that action; or

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1 (3) [~~he~~] the hearing officer, member of the
2 board of review or secretary has an interest which would
3 prejudice [~~his~~] the rendering of an impartial decision.

4 The secretary, any member of the board of review or appeal
5 tribunal hearing officer shall withdraw from any proceeding in
6 which [~~he~~] the hearing officer, member of the board of review
7 or secretary cannot accord a fair and impartial hearing or when
8 a reasonable person would seriously doubt whether the hearing
9 officer, board member or secretary could be fair and impartial.
10 Any party may request a disqualification of any appeal tribunal
11 hearing officer or board of review member by filing an
12 affidavit with the board of review or appeal tribunal promptly
13 upon discovery of the alleged grounds for disqualification,
14 stating with particularity the grounds upon which it is claimed
15 that the person cannot be fair and impartial. The
16 disqualification shall be mandatory if sufficient factual basis
17 is set forth in the affidavit of disqualification. If a member
18 of the board of review is disqualified or withdraws from any
19 proceeding, the remaining members of the board of review may
20 appoint an appeal tribunal hearing officer to sit on the board
21 of review for the proceeding involved.

22 F. There is established within the department, for
23 the purpose of providing higher level administrative appeal and
24 review of determinations of a claims examiner or decisions
25 issued by a hearing officer pursuant to Subsection B or D of

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1 this section, a "board of review" consisting of three members.
2 Two members shall be appointed by the governor with the consent
3 of the senate. The members so appointed shall hold office at
4 the pleasure of the governor for terms of four years. One
5 member appointed by the governor shall be a person who, on
6 account of [~~his~~] previous vocation, employment or affiliation,
7 can be classed as a representative of employers, and the other
8 member appointed by the governor shall be a person who, on
9 account of [~~his~~] previous vocation, employment or affiliation,
10 can be classed as a representative of employees. The third
11 member shall be an employee of the department appointed by the
12 secretary who shall serve as chairman of the board. Either
13 member of the board of review appointed by the governor who has
14 missed two consecutive meetings of the board may be removed
15 from the board by the governor. Actions of the board shall be
16 taken by majority vote. If a vacancy on the board in a
17 position appointed by the governor occurs between sessions of
18 the legislature, the position shall be filled by the governor
19 until the next regular legislative session. The board shall
20 meet at the call of the secretary. Members of the board
21 appointed by the governor shall be paid per diem and mileage in
22 accordance with the Per Diem and Mileage Act for necessary
23 travel to attend regularly scheduled meetings of the board of
24 review for the purpose of conducting the board's appellate and
25 review duties.

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1 G. The board of review shall hear and review all
2 cases appealed in accordance with Subsection H of this section.
3 The board of review may modify, affirm or reverse the decision
4 of the hearing officer or remand any matter to the claims
5 examiner, tax representative or hearing officer for further
6 proceedings. Each member appointed by the governor shall be
7 compensated at the rate of fifteen dollars (\$15.00) for each
8 case reviewed up to a maximum compensation of twelve thousand
9 dollars (\$12,000) in any one fiscal year.

10 H. Any party aggrieved by a final decision of a
11 hearing officer may file, in accordance with regulations
12 prescribed by the secretary, an application for appeal and
13 review of the decision with the secretary. The secretary shall
14 review the application and shall, within fifteen days after
15 receipt of the application, either affirm the decision of the
16 hearing officer, reverse the decision of the hearing officer,
17 modify the decision of the hearing officer, remand the matter
18 to the hearing officer, tax representative or [~~the~~] claims
19 examiner for an additional hearing or refer the decision to the
20 board of review for further review and decision on the merits
21 of the appeal. If the secretary affirms, reverses or modifies
22 the decision of the hearing officer, that decision shall be the
23 final administrative decision of the department and any appeal
24 therefrom shall be taken to the district court in accordance
25 with the provisions of Subsections M and N of this section. If

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1 the secretary remands a matter to a hearing officer, tax
2 representative or claims examiner for an additional hearing,
3 judicial review shall be permitted only after issuance of a
4 final administrative decision. If the secretary refers the
5 decision of the hearing officer to the board of review for
6 further review, the board's decision on the merits of the
7 appeal ~~[will]~~ shall be the final administrative decision of the
8 department, which may be appealed to the district court in
9 accordance with the provisions of Subsections M and N of this
10 section. If the secretary takes no action within fifteen days
11 of receipt of the application for appeal and review, the
12 decision ~~[will]~~ shall be promptly scheduled for review by the
13 board of review as though it had been referred by the
14 secretary. The secretary may request the board of review to
15 review a decision of a hearing officer that the secretary
16 believes to be inconsistent with the law or with applicable
17 rules of interpretation or that is not supported by the
18 evidence, and the board of review shall grant the request if it
19 is filed within fifteen days of the issuance of the decision of
20 the hearing officer. The secretary may also direct that any
21 pending determination or adjudicatory proceeding be removed to
22 the board of review for a final decision. If the board of
23 review holds a hearing on any matter, the hearing shall be
24 conducted by a quorum of the board of review in accordance with
25 regulations prescribed by the secretary for hearing appeals.

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1 The board of review shall promptly notify the interested
2 parties of its findings of fact and decision. A decision of
3 the board of review on any disputed matter reviewed and decided
4 by it shall be based upon the law and the lawful rules of
5 interpretation issued by the secretary, and it shall be the
6 final administrative decision of the department, except in
7 cases of remand. If the board of review remands a matter to a
8 hearing officer, claims examiner or tax representative,
9 judicial review shall be permitted only after issuance of a
10 final administrative decision.

11 I. Notwithstanding any other provision of this
12 section granting any party the right to appeal, benefits shall
13 be paid promptly in accordance with a determination or a
14 decision of a claims examiner, hearing officer, secretary,
15 board of review or [a] reviewing court, regardless of the
16 pendency of the period to file an appeal or petition for
17 judicial review that is provided with respect thereto in
18 Subsection D or M of this section or the pendency of any such
19 filing or petition until such determination or decision has
20 been modified or reversed by a subsequent decision. The
21 provisions of this subsection shall apply to all claims for
22 benefits pending on the date of its enactment.

23 J. If a prior determination or decision allowing
24 benefits is affirmed by a decision of the department, including
25 the board of review or a reviewing court, the benefits shall be

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1 paid promptly regardless of any further appeal which may
2 thereafter be available to the parties, and no injunction,
3 supersedeas, stay or other writ or process suspending the
4 payment of benefits shall be issued by the secretary or board
5 of review or any court, and no action to recover benefits paid
6 to a claimant shall be taken. If a determination or decision
7 allowing benefits is finally modified or reversed, the
8 appropriate contributing employer's account will be relieved of
9 benefit charges in accordance with Subsection B of Section
10 51-1-11 NMSA 1978.

11 K. The manner in which disputed claims shall be
12 presented, the reports thereon required from the claimant and
13 from employers and the conduct of hearings and appeals shall be
14 in accordance with rules prescribed by the secretary for
15 determining the rights of the parties, whether or not the rules
16 conform to common law or statutory rules of evidence and other
17 technical rules of procedure. A hearing officer or the board
18 of review may refer to the secretary for interpretation any
19 question of controlling legal significance, and the secretary
20 shall issue a declaratory interpretation, which shall be
21 binding upon the decision of the hearing officer and the board
22 of review. A full and complete record shall be kept of all
23 proceedings in connection with a disputed claim. All testimony
24 at any hearing upon a disputed claim shall be recorded but need
25 not be transcribed unless the disputed claim is appealed to the

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1 district court.

2 L. Witnesses subpoenaed pursuant to this section
3 shall be allowed fees at a rate fixed by the secretary. Such
4 fees and all administrative expenses of proceedings involving
5 disputed claims shall be deemed a part of the expense of
6 administering the Unemployment Compensation Law.

7 M Any determination or decision of a claims
8 examiner or hearing officer or by a representative of the tax
9 section of the department in the absence of an appeal therefrom
10 as provided by this section shall become final fifteen days
11 after the date of notification or mailing thereof, and judicial
12 review thereof shall be permitted only after any party claiming
13 to be aggrieved thereby has exhausted ~~[his]~~ the remedies as
14 provided in Subsection H of this section. The division and any
15 employer or claimant who is affected by the decision shall be
16 joined as a party in any judicial action involving the
17 decision. All parties shall be served with an endorsed copy of
18 the petition within thirty days from the date of filing and an
19 endorsed copy of the order granting the petition within fifteen
20 days from entry of the order. Service on the department shall
21 be made on the secretary or his designated legal representative
22 either by mail with accompanying certification of service or by
23 personal service. The division may be represented in a
24 judicial action by an attorney employed by the department or,
25 when requested by the secretary, by the attorney general or any

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1 district attorney.

2 N. The final decision of the secretary or board of
3 review upon any disputed matter may be reviewed both upon the
4 law, including the lawful rules of interpretation issued by the
5 secretary, and the facts by the district court of the county
6 wherein the person seeking the review resides upon certiorari,
7 unless it is determined by the district court where the
8 petition is filed that, as a matter of equity and due process,
9 venue should be in a different county. For the purpose of the
10 review, the division shall return on certiorari the reports and
11 all of the evidence heard by it on the reports and all the
12 papers and documents in its files affecting the matters and
13 things involved in such certiorari. The district court shall
14 render its judgment after hearing, and either the department or
15 any other party affected may appeal from the judgment to the
16 court of appeals in accordance with the rules of appellate
17 procedure. Certiorari shall not be granted unless applied for
18 within thirty days from the date of the final decision of the
19 secretary or board of review. Certiorari shall be heard in a
20 summary manner and shall be given precedence over all other
21 civil cases except cases arising under the Workers'
22 Compensation Act [~~of this state~~]. It is not necessary in any
23 proceedings before the division to enter exceptions to the
24 rulings, and no bond shall be required in obtaining certiorari
25 from the district court, but certiorari shall be granted as a

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1 matter of right to the party applying therefor. "

2 Section 2. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect immediately.

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