

34:15-95.1

LEGISLATIVE HISTORY CHECKLIST

NJSA: 34:15-95.1

(Second injury fund cases -- eliminate review of cases by Commissioner of Labor)

LAWS OF: 1983

CHAPTER: 421

Bill No: S969

Sponsor(s): Feldman

Date Introduced: February 8, 1982

Committee: Assembly: Labor

Senate: Labor, Industry and Professions

Amended during passage: No

Date of Passage: Assembly: Dec. 8, 1983

Senate: May 24, 1982

Date of Approval: January 5, 1984

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: ~~No~~ yes

Following were printed:

Reports: No

Hearings: No

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FROM: [illegible]

CHAPTER 421 LAWS OF N. J. 1983

APPROVED 1-5-84

SENATE, No. 969

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 8, 1982

By Senator FELDMAN

Referred to Committee on Labor, Industry and Professions

AN ACT concerning decisions by the Commissioner of Labor as to
Second Injury Fund Benefits and amending P. L. 1938, c. 198.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 3 of P. L. 1938, c. 198 (C. 34:15-95.1) is amended to
2 read as follows:

3 3. Applications for benefits under this act shall be made by a
4 verified petition filed in duplicate within 2 years after the date of
5 the last payment of compensation by the employer or the insurance
6 carrier addressed to the Commissioner of Labor **[of the State of**
7 **New Jersey]** who shall refer it to **[a Deputy Commissioner of**
8 **Workmen's]** *a judge of Compensation* to hear testimony and for
9 **[an advisory report as to findings]** *a decision as to whether the*
10 *petitioner shall or shall not be admitted to the benefits provided*
11 *under this act;* provided, however, that the limitation herein shall
12 not apply to those persons now receiving or who have received
13 compensation payments from said fund and whose accident
14 occurred since June 27, 1923. **[The decision, however, as to whether**
15 **the petitioner shall or shall not be admitted to the benefits shall be**
16 **rendered by the said Commissioner of Labor.]** Review of said
17 decision shall be in accordance with **[section]** *R. S. 34:15-66* **[of**
18 **the Revised Statutes].** In all proceedings affecting the fund under
19 this act the Commissioner of Labor shall be a necessary party.

1 2. This act shall take effect immediately.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics thus is new matter.**

STATEMENT

This bill to transfer dispositive adjudicative authority for decisions in "2nd Injury Fund" cases from the State Commissioner of Labor (on the advice of the Deputy Commissioner of Workers' Compensation) to individual workers' compensation judges. Such decisions would continue to be appealable to the Superior Court, Appellate Division.

This bill will simplify procedures at a time when there has been an increase in challenges to the commissioner's decisions, partially as a result of the passage of the 1979 amendments to the Workers' Compensation Law. Those amendments, among other things, expanded fund jurisdiction and raised benefit levels for petitioners.

In two recent decisions in the Appellate Division centered on challenges to the commissioner's authority in these matters, *Delesky v. Tasty Baking Company et al.* and *Lewicki v. N. J. Art Foundary*, 176 N. J. Super. 358, the court recommended that the Legislature reconsider the present decisional scheme of 2nd Injury Fund liability and rewrite the statute along the lines of this bill.

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ASSEMBLY LABOR COMMITTEE

STATEMENT TO

SENATE, No. 969

STATE OF NEW JERSEY

DATED: JUNE 16, 1983

This bill would direct the Commissioner of Labor to refer claims for benefits under the Second Injury Fund ("Fund") to judges of Workers' Compensation who would, in turn, have exclusive authority to grant or deny any award. As is the case under the present law, decisions regarding these benefits would be appealable to the Superior Court.

The purpose of the bill is to resolve a question which has been the subject of conflicting State court decisions, namely, who should have ultimate decision-making authority in second injury fund cases. In the case of *Delesky v. Tasty Baking Company*, 175 N. J. Super. 513 (App. Div. 1980), the Superior Court interpreted the standard of review established by N. J. S. A. 34:15-95.1 to mean that:

“[T]he Commissioner [of Labor] is not bound by the opinion of the judge of compensation, but in light of the expertise of the judge and his opportunity to gauge directly the credibility of the witnesses, the Commissioner is required to accept and affirm the judge's finding if that finding could reasonably have been reached on sufficient credible evidence present in the whole record.” 175 N. J. Super. at 517.

In reaching its decision, the *Delesky* court noted that the section provides that a claim for Fund benefits shall be addressed to the Commissioner of Labor “who shall refer it to a [judge of compensation] to hear testimony and for an advisory report as to findings.” The section goes on to state, however, that “[t]he decision as to whether the petitioner shall or shall not be admitted to the benefits shall be rendered by the Commissioner of Labor. . . .” Quoting from its decision in *Vann v. M. P. Godkin Mfg. Co.*, 168 N. J. Super. 7, 10 (App. Div. 1979), the court criticized the foregoing provision as providing for an intermediate administrative review which serves “no justifiable functional purpose.” The court reiterated the recommendation that the Legislature attend to and resolve this “problem.”

In *Lewicki v. N. J. Art Foundry*, 88 N. J. 75, 82 (1981), the State Supreme Court overruled *Delesky*, on how N. J. S. A. 34:15-95.1 should

be construed, and found that, in second injury fund cases, [t]he commissioner of Labor and Industry is free to make *de novo* findings of fact and conclusions of law on the basis of the record presented. At the same time, however, the Supreme Court acknowledged that the procedure established by the section “is inconsistent with the plenary quasi judicial powers of Judges of Compensation in all other proceedings under the act.”

The Supreme Court observed that Senate Bill No. 3096 of 1981, then pending before the Legislature, would, like the presently proposed bill, transfer the power to decide second injury fund cases from the Commissioner of Labor to Judges of Compensation. The court concluded, however, that “until the Legislature acts, we are bound by the current statutory language.”

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO
SENATE, No. 969

STATE OF NEW JERSEY

DATED: MARCH 1, 1982

This bill transfers decision making authority for approving or denying awards in "Second Injury Fund" cases from the Commissioner of Labor to workers' compensation judges. Such decisions would continue to be appealable to the Superior Court, Appellate Division.

As a result of a Superior Court, Appellate Division, decision of September 29, 1980 in *Delesky v. Tasty Baking Company*, 175 N. J. Super. 513, in which the court reversed the Labor Commissioner's decision to reject the trial judge's award of benefits from the Second Injury Fund, a new rule concerning rulings by the Commissioner was adopted by the court. The court stated that "the Commissioner is not bound by the opinion of the judge of compensation, but in light of the expertise of the judge and his opportunity to gauge directly the credibility of the witnesses, the Commissioner is required to accept and affirm the judge's finding if that finding could reasonably have been reached on sufficient credible evidence present in the whole record." *Delesky v. Tasty Baking Company*, 175 N. J. Super. 517.

In *Vann v. M. P. Godkin Manufacturing Company*, 168 N. J. Super. 7, 10 (1979), *Delesky v. Tasty Baking Company*, 175 N. J. Super. 516, 517 (1980), and *Lewicki v. N. J. Art Foundry*, 176 N. J. Super. 360, 361 (1980), the court has recommended the changes incorporated in this bill. It viewed the "intermediate administrative review" by the Commissioner of the trial judge's findings and advisory opinion as serving "no justifiable functional purpose." It noted that the process "seems inconsistent with the plenary quasi-judicial powers of judges of compensation in all other proceedings under the act." It recommended legislative attention to this problem.

BILLS SIGNED

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JANUARY 5, 1984

S-969, sponsored by State Senator Matthew Feldman, which transfers adjudicative authority for decisions in "Second Injury Fund" cases from the Commissioner of Labor to individual Workers Compensation judges.

S-1003, sponsored by State Senator Laurence S. Weiss, D-Middlesex, which provides for tax abatement for New Jersey banks that create an international banking facility.

S-1466, sponsored by State Senator Edward T. O'Connor, Jr., D-Hudson, which establishes a Supervised Visitation Program to be administered by the Administrative Office of the Courts. The program would promote court-ordered supervised visitation between children and divorced parents in facilities provided by approved community organizations.

S-1562, also sponsored by State Senator O'Connor, which authorizes the appointment of two additional municipal court judges in Jersey City and Newark under certain circumstances. If the city has a municipal court judge sitting, full time, on the housing court or the central processing court, new judgeships could be created to replace those judges.

S-1622, sponsored by State Senator C. Louis Bassano, R-Union, which permits local government food service contracts for periods up to three years. Currently local government contracts are generally limited by law to one year.

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