

No. 56

AN ACT

HB 1398

Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as amended, "An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties," further defining "occupational disease," and providing for the running of certain statutes of limitation applicable to certain benefits.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Clause (c) of section 108, act of June 2, 1915 (P.L.736, No.338), known as "The Pennsylvania Workmen's Compensation Act," reenacted and amended June 21, 1939 (P.L.520, No.281), added October 17, 1972 (P.L.930, No.223), is amended to read:

Section 108. The term "occupational disease," as used in this act, shall mean only the following diseases.

* * *

(c) Poisoning by methanol, carbon bisulfide, *carbon monoxide*, hydrocarbon distillates (naphthas and others) or halogenated hydrocarbons, toluene diisocyanate (T.D.I.) or any preparations containing these chemicals or any of them, in any occupation involving direct contact with, handling thereof, or exposure thereto.

* * *

Section 2. Section 306.1 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

Section 306.1. If an employe, who has incurred (through injury or otherwise) permanent partial disability, through the loss, or loss of use of, one hand, one arm, one foot, one leg or one eye, incurs total disability through a subsequent injury, causing loss, or loss of use of, another hand, arm, foot, leg or eye, he shall be entitled to additional compensation as follows:

After the cessation of payments by the employer for the period of weeks prescribed in Clause (c) of section 306, for the subsequent injury, additional compensation shall be paid during the continuance of total disability, at the weekly compensation rate applicable for total disability. This additional compensation shall be paid by the department out of the Subsequent Injury Fund created pursuant to section 306.2. All claims for such additional compensation shall be forever barred unless the employe shall have filed a petition therefor with the department in the same manner and within the same time as provided in section 315 with respect to other injuries. *Where, however, a person is receiving benefits pursuant to the act of June 28, 1935*

(P.L.477, No.193), referred to as the Heart and Lung Act, the two-year period in which parties must file a petition for additional compensation, shall not begin to run until the expiration of the receipt of benefits pursuant to the Heart and Lung Act.

The Department of Labor and Industry shall be charged with the conservation of the assets of said appropriation. In furtherance of this purpose, the Attorney General shall appoint a member of his staff to represent the Subsequent Injury Fund in all proceedings brought to enforce claims against such fund. In its award the Department of Labor and Industry shall specifically find the amount the injured employee shall be paid weekly, the number of weeks compensation which shall be paid by the employer, the date upon which payments shall begin, and if possible the length of time such payments shall continue.

Any benefits received by any employe, or to which he may be entitled, by reason of such increased disability, from any State or¹ Federal fund or agency to which said employe has not directly contributed, shall be regarded as a credit to any award made against the Commonwealth as aforesaid, excepting those benefits received by an employe by reason of service connected physical injuries, incurred during any war between the United States of America and any foreign country.

Section 3. Section 315 of the act, amended October 17, 1972 (P.L.930, No.223), is amended to read:

Section 315. In cases of personal injury all claims for compensation shall be forever barred, unless, within two years after the injury, the parties shall have agreed upon the compensation payable under this article; or unless within two years after the injury, one of the parties shall have filed a petition as provided in article four hereof. In cases of death all claims for compensation shall be forever barred, unless within two years after the death, the parties shall have agreed upon the compensation under this article; or unless, within two years after the death, one of the parties shall have filed a petition as provided in article four hereof. ***Where, however, in the case of any person receiving benefits pursuant to the act of June 28, 1935 (P.L.477, No.193), referred to as the Heart and Lung Act, the two-year period in which parties must agree upon the compensation or file a petition for compensation in cases of personal injury or in death, shall not begin to run until the expiration of the receipt of benefits pursuant to the Heart and Lung Act.*** Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of two years from the time of the² making of the most recent payment prior to date of filing such petition: Provided, That any payment made under an established plan or policy of insurance for the payment of benefits on account of non-occupational illness or injury and which payment is identified as

¹"of" in original.

²"the" omitted in original.

not being workmen's compensation shall not be considered to be payment in lieu of workmen's compensation, and such payment shall not toll the running of the Statute of Limitations. However, in cases of injury resulting from ionizing radiation in which the nature of the injury or its relationship to the employment is not known to the employe, the time for filing a claim shall not begin to run until the employe knows, or by the exercise of reasonable diligence should know, of the existence of the injury and its possible relationship to his employment. The term "injury" in this section means, in cases of occupational disease, disability resulting from occupational disease.

Section 4. The second paragraph of subsection (a) of section 413 and section 434 of the act, amended March 29, 1972 (P.L. 159, No. 61), are amended to read:

Section 413. (a) * * *

A referee designated by the department may, at any time, modify, reinstate, suspend, or terminate a notice of compensation payable, an original or supplemental agreement or an award of the department or its referee, upon petition filed by either party with the department, upon proof that the disability of an injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or that the status of any dependent has changed. Such modification, reinstatement, suspension, or termination shall be made as of the date upon which it is shown that the disability of the injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or upon which it is shown that the status of any dependent has changed: Provided, That, except in the case of eye injuries, no notice of compensation payable, agreement or award shall be reviewed, or modified, or reinstated, unless a petition is filed with the department within two years after the date of the most recent payment of compensation made prior to the filing of such petition. ***Where, however, a person is receiving benefits pursuant to the act of June 28, 1935 (P.L. 477, No. 193), referred to as the Heart and Lung Act, the two-year period in which a petition to review, modify, or reinstate a notice of compensation, agreement or award must be filed, shall not begin to run until the expiration of the receipt of benefits pursuant to the Heart and Lung Act:*** And provided further, That any payment made under an established plan or policy of insurance for the payment of benefits on account of nonoccupational illness or injury and which payment is identified as not being workmen's compensation shall not be considered to be payment in lieu of workmen's compensation, and such payment shall not toll the running of the Statute of Limitations: And provided further, That where compensation has been suspended because the employe's earnings are equal to or in excess of his wages prior to the injury that payments under the agreement or award may be resumed at any time during the period for which compensation for partial disability is payable, unless it be shown that the loss in earnings does not result from the disability due to the injury.

* * *

Section 434. A final receipt, given by an employe or dependent entitled to compensation under a compensation agreement notice or award, shall be prima facie evidence of the termination of the employer's liability to pay compensation under such agreement notice or award: Provided, however, That a referee designated by the department may, at any time within two years from the date to which payments have been made, set aside a final receipt, upon petition filed with the department, or on the department's own motion, if it be shown that all disability due to the injury in fact had not terminated. *Where, however, a person is receiving benefits pursuant to the act of June 28, 1935 (P.L.477, No.193), referred to as the Heart and Lung Act, the two-year period within which a referee may set aside a final receipt upon petition filed with the department, or upon the department's own motion, shall not begin to run until the expiration of the receipt of benefits pursuant to the Heart and Lung Act.*

Section 5. This act shall take effect in ninety days.

APPROVED—The 4th day of April, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 56.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.