

## BULLETIN

June 22, 2010

R.C. 2234

### To the Members of the Board

Re: **Closing of the New York Special Disability Fund  
Workers' Compensation Board Subject Number 046-432**

The New York Workers' Compensation Law, Section 15(8)(h)(2)(A), enacted as part of the 2007 reform legislation, directed the closing of the Special Disability Fund for all claims for reimbursement with a date of accident on or after July 1, 2007. As to claims with dates of accident or disablement before July 1, 2007, the statute further stated that no carrier or employer, or the State Insurance Fund, may file a claim for reimbursement from the Special Disability Fund after July 1, 2010, and no written submissions or evidence in support of such a claim may be submitted after that date.

The New York State Workers' Compensation Board has just released Subject Number 046 – 432, which provides guidance with respect to the timeframes and filing requirements necessary to apply for Special Disability Fund reimbursement in accordance with the reform legislation.

A copy of Subject Number 046-432 is attached for your information.

Questions regarding this subject number, or any other questions pertaining to the closing of the Special Disability Fund, should be directed to the Workers' Compensation Board.

Please distribute this information to the appropriate personnel within your organization.

Very truly yours,

Monte Almer

President

MH/ab  
Encl.



# Board Releases (Subject Numbers)

New York State

## Workers' Compensation Board

OFFICE OF THE CHAIR

20 Park Street Albany, New York 12207

Governor David A. Paterson

Subject No. 046-432

### Closing of Special Funds to Claims For Reimbursement: Submission of Evidence

Date: June 21, 2010

Workers' Compensation Law (WCL) Section 15(8)(h)(2)(A), enacted as part of the 2007 reform legislation (L. 207, Ch. 6 § 76, effective March 13, 2007), directed the closing of the Special Disability Fund for all claims for reimbursement with a date of accident on or after July 1, 2007. (See **Subject Number 046-194** dated June 26, 2007.)

As to claims with dates of accident or disablement before July 1, 2007, the statute further provides:

"No carrier or employer, or the state insurance fund, may file a claim for reimbursement from the special disability fund after July first, two thousand ten, and no written submissions or evidence in support of such a claim may be submitted after that date."

WCL § 2(19) provides:

"A "claim for reimbursement" from the special disability fund means an application to the board ... for a determination that the special disability fund is liable in the first instance for any reimbursement to the insurance carrier, self-insured employer or state insurance fund."

As to the filing of a claim for reimbursement, 12 NYCRR 300.5(e) provides:

"A claim for reimbursement pursuant to section 15, subdivision 8 of the Workers' Compensation Law shall be filed on a form [C-250] prescribed by the chair."

In order to support a claim for reimbursement, the carrier not only has to timely submit its claim form (C-250), but also has to submit medical evidence showing that "(1) claimant has a pre-existing permanent physical impairment that hinders, or is likely to hinder, job potential; (2) the claimant has a subsequent work-related injury or occupational disease; and (3) the disability caused by both conditions is materially and substantially greater than that which would have been caused by the work-related condition alone" (cites omitted) (Matter of Newburgh Enlarged C.S.D., 2010 NY Wrk. Comp. 30700392 [2010]).

Generally, such supporting evidence includes, but is not limited to, medical records referencing a prior permanent physical impairment and a medical report from the carrier's medical consultant which gives the opinion that the permanent condition created by the work-related accident is materially and substantially greater because of the prior permanent impairment and that the prior impairment is or was likely to be a hindrance to employment (*see* Matter of Interline Employee Associate, 2010 NY Wrk. Comp. 00611531 [2010]).

Based upon WCL § 15(8)(h)(2)(A), all carriers and employers making a claim for reimbursement from Special Funds must have their C-250's and all their documentary evidence supporting their claim in the Board's electronic file on or before July 1, 2010. Documentary evidence supporting the claim submitted after that date will not be considered by the Board. The language of WCL § 15(8)

(h)(2)(A) is unambiguous (*see Matter of Jaworek v Sears Roebuck & Co.*, 2009 NY Slip Op 8114, 67 AD3d 1161 [2009], lv denied, 2010 NY LEXIS 699 [2010]). The Board does not have the discretion to direct or accept late evidentiary submissions or any other written submissions from the carrier or employer on the issue of liability under WCL § 15(8)(d) after July 1, 2010. However, the statute does not preclude Special Funds from submitting medical evidence in opposition to a claim after July 1, 2010.

The Board may continue to schedule and hold hearings to determine Section 15(8) liability after July 1, 2010. Workers' Compensation Law Judges, while prohibited from directing or accepting any written submissions or evidence in support of a claim after that date, may permit appropriate cross-examination of medical witnesses consistent with the statute and applicable Board regulations.

Robert E. Beloten  
Chair