**90-351 WORKERS' COMPENSATION BOARD**

**Chapter 2: SECTION 213 COMPENSATION FOR PARTIAL INCAPACITY**

**§ 1. Permanent Impairment Threshold**

1. The permanent impairment threshold for cases with dates of injury on or after January 1, 1993 and before January 1, 2002 is in excess of 11.8%.

2. The permanent impairment threshold for cases with dates of injury on or after January 1, 2002 and before January 1, 2004 is in excess of 13.2%.

3. The permanent impairment threshold for cases with dates of injury on or after January 1, 2004 and before January 1, 2006 is in excess of 13.4%.

4. The permanent impairment threshold for cases with dates of injury on or after January 1, 2006 and before January 1, 2013 is in excess of 12%.

**§ 2. Extension of 260­week limitation in §213**

The 260-week benefit limitation in §213 was extended to:

1. 312 weeks on January 1, 1999;

2. 364 weeks on January 1, 2000;

3. 416 weeks on January 1, 2007;

4. 468 weeks on January 1, 2008; and

5. 520 weeks on January 1, 2009.

**§ 3. Collection of permanent impairment data**

1. A case involves “permanent injury” if any qualified health care provider has indicated that the employee’s limitations are likely permanent. Once this determination has been made the employee may seek a permanent impairment assessment.

2. Permanent impairment ratings shall be calculated by a specialist in a field applicable to the employee’s injury who is qualified by training and/or experience to perform permanent impairment assessments.

3. The specialist’s fee for calculating the permanent impairment rating must be paid by the employer/insurer. The impairment rating may be done in conjunction with a regularly scheduled appointment so long as subsection 4 of this rule is complied with.

4. Determination of the employee’s right to receipt of payment for permanent impairment benefits shall be governed by the law in effect at the time of the employee’s injury.

5. Permanent impairment shall be determined after the effective date of this rule by use of the American Medical Association’s "Guides to the Evaluation of Permanent Impairment," 4th edition, copyright 1993.

**§ 4.** [*Reserved]*

**§ 5. Requests for Extension of Benefits Pursuant to 39-A M.R.S.A. §213(1)**

1. Cessation of benefits pursuant to 39-A M.R.S.A. §213(1) if no order or award of compensation or compensation scheme has been entered.

A. Prior to cessation of benefits pursuant to 39-A M.R.S.A. §213(1), the employer must notify the employee that the employee’s lost time benefits are due to expire. The notice must be sent at least 21 days in advance of the expiration date, and must include the date the lost time benefits are due to expire and the following paragraph:

If you are experiencing extreme financial hardship due to inability to return to gainful employment, you may be eligible for an extension of your weekly benefits. To request such an extension, you must file a Petition for Extension of Benefits within 30 calendar days of the date that benefits expire, or, in cases where the expiration date is contested, within 30 calendar days of a final decree as to the expiration date.

B. Failure to send the required notice will automatically extend the employee’s entitlement to lost time benefits for the period that the notice was not sent.

C. Notice shall be considered “sent” if it is mailed to the last address to which a compensation check was sent.

1-A. Cessation of benefits pursuant to 39-A M.R.S.A. §213(1) if an order or award of compensation or compensation scheme has been entered.

A. The employer must file a Petition to Terminate Benefit Entitlement which shall contain notice to the employee regarding the process for requesting an extension of benefits.

B. If the Petition to Terminate Benefit Entitlement is granted, the decree shall contain the following language:

If you are experiencing extreme financial hardship due to inability to return to gainful employment, you may be eligible for an extension of your weekly benefits. To request such an extension, you must file a Petition for Extension of Benefits within 30 calendar days of the date of this decree or, if an appeal is filed, within 30 calendar days after the appeal is final.

2. An employee must file a Petition for Extension of Benefits within 30 calendar days of the date that benefits expire, or, in cases where the expiration date is contested, within 30 calendar days of a final decree as to the expiration date. The petition must be served by certified mail, return receipt requested, to the other parties named in the petition.

3. No response to a petition filed under subsection 2 is required. It will be presumed that all allegations are denied.

4. The employee must file responses to the questions contained in Appendix I attached to this rule within 30 days of the date the employee’s petition is filed. The responses must be sent to the employer/insurer. Failure to provide the required responses may result in dismissal with prejudice of the petition, exclusion of evidence, or other sanction that the Board deems just.

5. The employer must turn over any documentary evidence it intends to introduce at hearing at least 15 days prior to the hearing. The information must be sent to the employee. Failure to provide the required evidence may result in exclusion of evidence or other sanction that the Board deems just.

6. Hearings will be held expeditiously in all cases. Hearings will take place before the Board of Directors. A majority vote of the membership of the Board will be required to extend benefits under this rule. Either the General Counsel or the Assistant General Counsel will be present to assist the Board with legal issues.

7. Parties will be allowed to present relevant evidence along with closing arguments on the date of the hearing. Unless extraordinary circumstances warrant, evidence submitted after the hearing will not be accepted.

8. In cases where benefits have been extended, a Petition for Reconsideration of Extended Benefits may be filed by the employer responsible for payment of the additional benefits. The employer must establish a material change in circumstances since the previous order. Orders extending benefits beyond 520 weeks are not subject to review more often than every two years from the date of the board order allowing an extension.

**Appendix I**

(Employees must provide the following information to the employer/insurer within 30 days of filing the Petition for Extension of Benefits.)

1. State what your present financial condition is (i.e. present monthly income vs. present monthly expenses).

2. State when and where you have looked for work in at least the last 3 months.

3. Provide a copy of your most recent tax return, if one was filed.

4. Please provide any other information that may be relevant to your present financial condition that you plan to rely on at hearing.

STATUTORY AUTHORITY: 39-A M.R.S. §§ 101 *et seq.*

EFFECTIVE DATE:

February 22, 1998 - Sections 1 and 2

AMENDED:

August 30, 1998 - Sections 3 and 4 added

December 14, 1998 - Section 5 and Appendix I added

May 8, 1999 - Subsections 2(2) and 4(2) added

July 24, 2000 - amendments to Section 2(3) added

March 28, 2001 - amendments to Section 4 (repeal & replace) & Section 5(4)

September 29, 2002 - Section 4 repealed, filing 2002-359

NON-SUBSTANTIVE CORRECTIONS:

January 8, 2003 - character spacing only.

AMENDED:

March 11, 2006 – Sections 1(2) & (3) and 2(4) & (5) added, filing 2006-104

December 4, 2007 – Section 2(6) and (7) added – 2007 Extension of Benefits, filing 2007-506

April 12, 2008 - Section 3(2) and (3), regarding PI collection, filing 2008-160

June 17, 2008 - Section 1(3) and (4), Section 2(6), added 2006 PI adjustment, Section 2(6) added – 2006 Non-Ext of Benefits, filing 2008-256

February 2, 2009 - Section 2(8) added, filing 2009-43

August 17, 2009 - Section 2(9) added, filing 2009-434

REPEALED AND REPLACED:

August 18, 2014 - filing 2014-169

AMENDED:

September 1, 2018 – filing 2018-123