

LETTER OPINION
94-L-192

July 28, 1994

Mr. Randy Hoffman
Acting Executive Director
Workers Compensation Bureau
500 East Front Avenue
Bismarck, ND 58504-5685

Dear Mr. Hoffman:

Thank you for your June 27, 1994, letter asking whether the Workers Compensation Bureau may "stay" payment of a permanent partial impairment award during the 30-day period in which a petition for reconsideration may be filed under N.D.C.C. ? 28-32-14.

In 1989, legislation recommended by an interim Legislative Council study was introduced which sought to make extensive changes to chapter 28-32 of the North Dakota Century Code by incorporating much of the 1981 Model State Administrative Procedures Act which had been adopted by the National Conference Commissioners on Uniform State Laws. 1989 House Bill No. 1031. One provision contained in 1989 House Bill No. 1031 and the model act was a provision allowing a presiding officer of a proceeding to stay the effectiveness of an initial or final order. However, 1989 House Bill 1031 did not pass. In 1991, legislation was again introduced seeking to incorporate some of the provisions of the 1981 model act. 1991 House Bill 1194. This legislation passed. 1991 N.D. Sess. Laws ch. 342. However, no provision allowing a presiding officer to "stay" the effectiveness of an order was made part of this legislation.

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Please note however, that N.D.C.C. ? 28-32-14.1 expressly recognizes that a complete and final order may set a date later than the date of issuance as the time the order becomes effective and can be enforced.

In addition, when an administrative agency receives a petition for reconsideration under N.D.C.C. ? 28-32-14, the agency may dissolve or amend the previous final order and set the matter for further hearing. Accordingly, it is my opinion that the Bureau may provide, in its initial order for a permanent partial impairment award under N.D.C.C. ? 28-32-13, that the order becomes effective at a date later than the date of issuance thereby allowing time for reconsideration or appeal under N.D.C.C. ? 28-32-14.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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