

# Comments of the Independent Regulatory Review Commission



## Department of Labor and Industry Regulation #12-117 (IRRC #3368)

### Impairment Rating

June 21, 2023

We submit for your consideration the following comments on the proposed rulemaking published in the April 22, 2023 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Labor and Industry (Department) to respond to all comments received from us or any other source.

#### **Section 123.102. IRE Requests. – Clarity.**

The following language is being added to Subsection (a):

If the evaluation is requested and occurs beyond the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits, the adjustment of the disability status must be achieved through the traditional administrative process such as by filing a Petition for Modification and, if successful, the adjustment of the disability status shall be effective as of the date of the evaluation or as determined by the evaluating physician.

A commentator has identified several concerns related to this new language as it appears in this subsection and also in other sections of the proposed rulemaking. We believe the clarity of the rulemaking could be improved by addressing these concerns.

First, they suggest the term “total disability benefits” be amended to the term “total disability compensation benefits” because that is the term used in Section 511.3 of the Workers’ Compensation Act (Act). 77 P.S. § 511.3. We agree that this change would make the rulemaking consistent with the Act and ask the Department to amend the final-form rulemaking accordingly.

Second, the term “traditional administrative process” is used in this subsection, Subsection (f) and also § 123.105(d.1). We note that Subsection (a) states that the “traditional administrative process” can be achieved by the filing of a “Petition for Modification.” The Preamble to the proposed rulemaking uses the term “litigation” when describing the “traditional administrative

process.” Besides the filing of a “Petition for Modification,” are there other mechanisms or processes that would fall under a “traditional administrative process? We ask the Department to define the term “traditional administrative process” or to provide a list of all actions that are considered to be part of that process.

Third, this subsection uses the term “adjustment of the disability status” while Subsection (f) refers to the reduction of benefits. Do these terms or phrases mean the same thing? If so, we suggest that the final-form rulemaking be amended to use one term or phrase consistently.

Finally, we believe the clarity of existing provisions could be improved. The existing language of this subsection addresses Impairment Rating Evaluations (IREs) that occur during the 60-day period subsequent to the expiration of an employee’s receipt of 104 weeks of total disability benefits. Subsection 123.105(d) explains what information must be reported to the Department if an adjustment to benefits is merited by the IRE conducted under § 123.102(a). We ask the Department to clarify if the “sixty days from the date of the notice the employee’s benefit status shall be adjusted from total to partial” referenced in § 123.105(d)(2) refers to the conclusion of the 104 weeks of total disability benefits or the conclusion of the 60-day period during which an IRE can be requested.