

Bill as
Introduced

HB 647-FN - AS INTRODUCED

2013 SESSION

13-0735

01/04

HOUSE BILL

647-FN

AN ACT relative to appeals from the compensation appeals board.

SPONSORS: Rep. G. Richardson, Merr 10

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill allows any party in interest aggrieved by a decision of the workers' compensation appeals board to appeal to the superior court. Such appeal shall be limited to issues of law. Current law allows appeals from the board to go directly to the supreme court.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to appeals from the compensation appeals board.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 Appeals From Compensation Appeals Board. Amend RSA 281-A:43, I(c) to read as follows:
2 (c) Any party in interest aggrieved by any order or decision of the board may appeal to
3 the supreme court *or the superior court* pursuant to RSA 541. *Appeals to the superior court*
4 *shall be limited to issues of law. Appeals to the superior court shall be filed in the county*
5 *or judicial district thereof where the employee or employer resides. If neither party resides*
6 *in the state, the appeal may be filed in any county or judicial district. Any appeal from the*
7 *superior court to the supreme court shall be by notice of appeal in accordance with the*
8 *rules of the supreme court.*
- 9 2 Award of Fees and Interest. Amend the introductory paragraph of RSA 281-A:44, I(a) to read
10 as follows:
11 (a) In any dispute over the amount of the benefit payable under this chapter which is
12 appealed to the board, *the superior court*, or *the* supreme court [~~or both~~], the employee, if such
13 employee prevails, shall be entitled to reasonable counsel fees and costs as approved by the board or
14 *applicable* court and interest on that portion of any award the payment of which is contested. For
15 the purposes of this paragraph, to "prevail" means:
16 3 Effective Date. This act shall take effect January 1, 2014.

LBAO
13-0735
01/29/13

HB 647-FN - FISCAL NOTE

AN ACT relative to appeals from the compensation appeals board.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, as introduced, at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 647-FN

BILL TITLE: relative to appeals from the compensation appeals board.

DATE: February 19, 2013

LOB ROOM: 307 **Time Public Hearing Called to Order:** 11:15 a.m.

Time Adjourned: 12:16 pm

(please circle if present)

Committee Members: Reps. A. White, S. Kelly, Coulombe, C. Rice, Weed, J. Schmidt, DiSilvestro, Andrews, Cahill, Ley, Tanner, Daniels, Burchell, H. Richardson, Infantine, Pellegrino, Flanagan, Emerick, Sedensky and St. James.

Bill Sponsors: Rep. G. Richardson, Merr 10

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

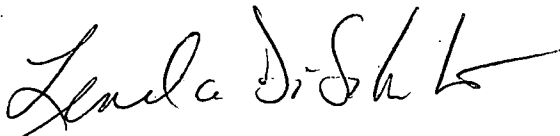
Rep. Gary Richardson - Support

This bill will help a person, would lose at the worker comp. board and feels the decision was based on law. That they have another means to seek; a decision in this matter other then the cost of going to the Supreme Court. This bill is not supporting one party over another but to allow either party to say you believe the worker comp. Board made a mistake on the decision based on law. The term "law" is strictly on legal interpretation not facts about a case.

***Leslie Nixon, New Boston Atty** - Support

Written material provided. This bill would be a tool for either party to use, if either party feels a decision made was in error based on a decision of "law". Law being something such as who is an employee and a case was lost on either side because of the workers comp board interpretation of "employee" under law. Feels this bill will allow legal issues to be decided by a judge only in legal issues and it would be the least costly way for either party to dispute an issue of law.

Respectfully submitted,



Rep. Linda DiSilvestro, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

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Bill Sponsors: Rep. G. Richardson, Merr 10

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

1. Rep Gary Richardson - Support.

This bill will help a person would lose at the Wkra
Comp Board - and feels the decision was based on law -
that they have another means to seek - a decision on this matter
other than the cost of going to the Supreme Court - This bill is
not supporting one party over another - but to allow either party to
say you believe the Wkra Comp Board made a mistake on
the decision based on law.
The term "Law" is strictly a legal interpretation - not facts
about a case.

2 Leslie Nixon - Atty. - Support - written material provided.

This bill would be a tool for either party to use - if either party feels a decision made was in error based on a decision of "Law". LAW being something such as: who is an employee - and a case was lost on either side because of the Wks Comp Board interpretation of "employee" under Law. Feels this bill will allow legal issues to be decided by a judge only on legal issues and it would be the least costly way for either party to dispute an issue of law.

Testimony

§ 275:51. Enforcement.

New Hampshire Statutes

Title 23. LABOR

Chapter 275. PROTECTIVE LEGISLATION

Payment of Wages

Current through Chapter 1 of the 2013 Legislative Session

§ 275:51. Enforcement

- I. The commissioner shall enforce and administer the provisions of this subdivision and the commissioner or the commissioner's authorized representatives are empowered, on his or her own motion or on an employee complaint, to hold hearings and otherwise to investigate charges of violations of this subdivision and to institute actions for penalties hereunder, and to entertain and adjudicate claims for wages due under the provisions of this subdivision.
- II. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person has violated any provision of this subdivision or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this subdivision.
- III. The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before said commissioner.
- III-a. Records compiled pursuant to employee interviews under paragraphs II and III are not subject to disclosure by the department. The commissioner may release such information to public officials when such information is necessary to perform their duties. If the commissioner determines that a person or employer has violated any provision of this subdivision or any rule adopted under this subdivision, that person or employer shall be provided with a report specifying the statute and rules that have been violated and a summary of supporting evidence.
- IV. In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the municipal or district court, on

application by the commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

- V. A wage claim may be filed by an employee or by the department on its own motion no later than 36 months from the date the wages were due. The commissioner shall notify the employer by serving upon the employer a copy of such claim and an order to file with the commissioner within 10 days from the receipt of such notice any objections to such claim specifying the grounds therefor. Service may be by certified mail with return receipt. If objection is not made within 10 days, the commissioner may order that payment be made in accordance with the claim. If requested, a hearing shall be afforded at which time any party may appear, with counsel if desired, and present evidence and cross-examine opposing witnesses. Any party, at the party's own expense, may cause a record to be made of the hearing. A written decision shall be made within 30 days after the hearing stating the decision and specifying the facts and conclusions upon which the decision is based. If wages are found to be due, an order for payment shall issue. Any party aggrieved by the decision may appeal to the superior court not later than 20 days from the date thereof by petition, setting forth that the decision is erroneous, in whole or in part, and specifying the grounds upon which the decision is claimed to be in error. Upon the filing of an appeal, the commissioner shall transfer to the court the record of the proceeding or a certified copy thereof. The scope of review by the superior court shall be limited to questions of law. After hearing and upon consideration of the record, the court may affirm, vacate or modify in whole or in part the decision of the commissioner, or may remand the matter to the commissioner for further findings. In the absence of a seasonable appeal, the decision and order shall be final, shall be entered upon the docket of the superior court at the request of the prevailing party, may be enforced as a judgment of the court, and shall be a lien upon the property of the employer situated in the state for a period of 3 years from the time of the decision. It is a requirement of this chapter for purposes of RSA 275:52 that a final order be immediately satisfied by the employer.

Cite as NHRS 275:51

Note:

1963, 237:4. 1975, 355:4-6. 1977, 133:1. 1995, 140:1. 1997, 226:4. 2005, 241:1, 2, eff. Jan. 1, 2006.

143 N.H. 722 (N.H. 1999), 97-151, McKay v. New Hampshire Compensation Appeals Bd.

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143 N.H. 722 (N.H. 1999)

732 A.2d 1025

McKay

v.

NEW HAMPSHIRE COMPENSATION APPEALS BOARD and another. Appeal of James D. McKay. (New Hampshire Compensation Appeals Board).

Nos. 97-151, 97-414.

Supreme Court of New Hampshire.

July 8, 1999

[732 A.2d 1026] [Copyrighted Material Omitted]

[732 A.2d 1027]

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Law Offices of David J. KillKelley, of Laconia (David J. KillKelley, on the brief and orally), for the petitioner, James D. McKay.

Sulloway & Hollis, P.L.L.C., of Concord (Martin L. Gross and Timothy A. Gudas, on the brief, and Mr. Gross orally), for the

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respondents, Katie Flo's Cafe, Inc. and Liberty Mutual Insurance Company.

Philip T. McLaughlin, attorney general (Douglas N. Jones, assistant attorney general, on the brief), for the State of New Hampshire, as amicus curiae.

BRODERICK, J.

In these consolidated cases, the petitioner, James D. McKay, appeals the Superior Court's (Perkins, J.) dismissal of his petition for injunctive relief and writ of mandamus, and the New Hampshire Compensation Appeals Board's (CAB) decision reducing his benefits. He argues that certain provisions of the Workers' Compensation Law, RSA chapter 281-A, violate the State Constitution because they deprive him of an impartial, judicial tribunal, and that the CAB's decision contains legal and factual error. We affirm the [732 A.2d 1028] superior court, and although we hold that the challenged provisions of the Workers' Compensation Law are constitutional, we reverse the CAB's decision and remand.

In June 1994, while working for Katie Flo's Cafe, Inc. as a dishwasher, the petitioner slipped, fell, and fractured his right hip. Liberty Mutual Insurance Company (Liberty Mutual), which insures the cafe, voluntarily paid the petitioner temporary total disability benefits. In March 1996, Liberty Mutual successfully petitioned the department of labor (DOL) to reduce the petitioner's benefits to the diminished earning capacity rate. The DOL also ordered that the petitioner receive ten weeks of vocational rehabilitation services. He appealed the reduction in benefits to the CAB for a de novo review, see RSA 281-A:43, I(b) (Supp.1998), while Liberty Mutual filed no appeal from the vocational rehabilitation award.

Prior to the CAB merits hearing, however, the petitioner sought a declaratory judgment and

writ of mandamus in superior court, requesting it to hear his workers' compensation appeal due to alleged constitutional infirmities in the Workers' Compensation Law. The trial court dismissed the petitioner's action, reasoning that he had adequate alternative relief before the CAB, including an appeal to the supreme court. The petitioner appealed the court's decision.

Following its hearing, the CAB determined that the evidence supported a reduction in the petitioner's benefits and rejected his various constitutional attacks on the Workers' Compensation Law.

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The petitioner's motion for rehearing was denied, and he appealed. Consolidated superior court and CAB appeals are now before us.

On appeal, the petitioner challenges the constitutionality of certain provisions of the Workers' Compensation Law and the merits of the CAB's decision reducing his benefits. Because the trial court never addressed the constitutional claims and dismissed them on other grounds not appealed by the petitioner, we affirm its decision. Accordingly, we review only the issues raised before the CAB and preserved for appellate review.

II

The petitioner argues that RSA 281-A:42-a, which establishes the compensation appeals board and its powers, violates both Part I, Article 37 and Part 2, Article 73 of the State Constitution by requiring adjudication of his compensation claim by the board, rather than by a judicial tribunal. He does not contend that the entire workers' compensation scheme is unconstitutional, but rather seeks judicial resolution of his underlying claim and application of the remainder of the Workers' Compensation Law, including no-fault liability and scheduled economic benefits.

A brief history of the Workers' Compensation Law provides valuable context for the petitioner's constitutional challenges. The act was first enacted in 1911 "[i]n recognition of the burdens, delays, inadequate relief and unequal operation of law inherent in common law remedies." *Thompson v. Forest*, 136 N.H. 215, 217, 614 A.2d 1064, 1066 (1992). "One of the more important aims of [the act was] to secure to the injured [employee] ... compensation by direct payments under certain fixed rules without a law-suit and without friction ... by a procedure at once simple and inexpensive." *Mulhall v. Nashua Mfg. Company*, 80 N.H. 194, 200, 115 A. 449, 453 (1921) (quotations and citations omitted). Accordingly, the act provides for no-fault liability with scheduled statutory compensation for work-related injuries and disabilities that affect earning capacity. *Bilodeau v. Oliver Stores, Inc.*, 116 N.H. 83, 86, 352 A.2d 741, 743-44 (1976).

Until 1959, the act permitted employees to elect between pursuing compensation under its terms or through a common law tort action. The legislature then amended the act to create a conclusive presumption [732 A.2d 1029] that employees accepted its coverage and waived their common law right to seek personal injury damages against their employers. Laws 1959, 187:4; see *Park v. Rockwell Int'l Corp.*, 121 N.H. 894, 896, 436 A.2d 1136, 1137 (1981). This statutory presumption remains in effect. See RSA 281-A:8 (Supp.1998). Until 1990, employees were entitled to seek a de novo review of their claims in the superior court. Compare RSA 281:37, I (1987) (repealed 1988) and Laws 1988, 194:2 with Laws 1990, 254:28. The 1990 amendment to the Workers' Compensation Law, however, eliminated de novo review by the superior court and

replaced it with de novo review by the CAB. Laws 1990, 254:28, 29; see also RSA 281-A:42-a, I, 43, I(b) (Supp.1998). Whether the 1990 amendment is constitutional is a matter of first impression.

Before turning to the specific constitutional provisions at issue, we clarify the nature of the petitioner's exception to the 1990 amendment. The petitioner argues that the amendment violates his constitutional right to judicial resolution of his compensation claim, including its legal and factual components. The actual effect of the amendment, however, is to deprive him of judicial resolution of only the facts underlying his workers' compensation claim because he still may seek de novo judicial review of its legal components. See RSA 281-A:43, I(c) (Supp.1998); RSA 541:13 (1997). Therefore, we review whether the failure of the Workers' Compensation Law to provide for judicial fact-finding for workers' compensation claims violates the constitutional provisions raised by the petitioner.

The petitioner initially argues that RSA 281-A:42-a violates Part I, Article 37 of our State Constitution. This provision states:

In the government of this state, the three essential powers thereof, to wit, the legislative, executive, and judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity.

Despite Part I, Article 37's admonition on the separation of powers, we have recognized that "the doctrine does not require an absolute division of powers, but a cooperative accommodation among the three branches of government," Opinion of the Justices (Prior Sexual Assault Evidence), 141 N.H. 562, 569, 688 A.2d 1006, 1010 (1997), and "contemplates some overlapping and duality in the division as a matter of practical and essential expediency," *Cloutier v. State Milk Control Board*, 92 N.H. 199, 203, 28 A.2d 554, 557 (1942). "[T]here is a region of authority, alternative and concurrent, the boundaries of which are fixed by no final rule." Opinion of the Justices, 87 N.H. 492, 493, 179 A. 357, 359 (1935). With respect to the judicial branch, resolving "questions of legal right" and "the function of trying and deciding litigation is strictly and exclusively" its domain. *Id.* at 493, 495, 179 A. at 359, 360. The legislature, however, acts within its constitutional authority when it empowers an administrative body to resolve factual issues underlying a purely statutory right. See *Pomponio v. State*, 106 N.H. 273, 274-75, 209 A.2d 733, 734-35 (1965).

It is well-settled that the rights and remedies provided by the Workers' Compensation Law are purely statutory. *Bilodeau*, 116 N.H. at 87, 352 A.2d at 744. Contrary to the petitioner's assertion that the act only changes the remedy, or method of recovery, of common law tort liability to statutory no-fault liability with limited economic compensation, the Workers' Compensation Law also supplants the redress, or compensation, available to injured employees. See *id.* at 86, 352 A.2d at 744 (workers' compensation law compensates only for injuries which produce disability which presumably affects earning power); *Mulhall*, 80 N.H. at 197, 115 A. at 452 (compensation under the act is in no sense to be considered as damages).

[732 A.2d 1030] The nature and extent of this redress "is governed by the express statutory language and that which can be fairly implied therefrom." *Bilodeau*, 116 N.H. at 87, 352 A.2d at

The petitioner contends that workers' compensation claims are not purely statutory. He argues that because the rights of employees to bring common law tort claims against employers existed when the State Constitution was ratified in 1784, their right to judicial redress against employers for bodily injury was preserved by the constitution. He, therefore, concludes that he is constitutionally entitled to judicial resolution of the facts underlying his claim as it seeks redress for bodily injury against his employer. The petitioner, however, is not seeking common law redress for his injury, but rather statutory redress provided by the Workers' Compensation Law. "Unlike tort actions, no damages or compensation are awarded [under the act] for pain and suffering, disfigurement as such, loss of consortium, and other elements of common law damages." *Id.* at 86-87, 352 A.2d at 744. Furthermore, the legislature's general authority to create statutory redress or compensation that substitutes for common law redress or compensation, without a constitutional amendment, is beyond dispute. See *Park*, 121 N.H. at 898, 436 A.2d at 1138 (generally, workers' compensation laws pass constitutional muster on due process grounds because they provide quid pro quo for tort victims whose rights of actions are supplanted by statute).

The

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petitioner places great weight on prior versions of the Workers' Compensation Law that permitted employees to elect between workers' compensation coverage and their common law right to sue their employers, see *Thompson*, 136 N.H. at 217, 614 A.2d at 1066, and enabled employees to seek de novo fact-finding by the superior court, see RSA 281:37, I. Such prior options, however, do not change the conclusion that the Workers' Compensation Law is a purely statutory substitution of common law rights, remedies, and redress available to injured employees. *Bilodeau*, 116 N.H. at 86, 352 A.2d at 743 (workers' compensation law is statutory substitute for common law tort action); *Park*, 121 N.H. at 898, 436 A.2d at 1138 (same). Because the petitioner seeks redress or compensation for his bodily injury pursuant to the Workers' Compensation Law, a purely statutory right, see *Bilodeau*, 116 N.H. at 87, 352 A.2d at 744, and does not challenge the constitutionality of the workers' compensation scheme in its totality, but see *Park*, 121 N.H. at 898, 436 A.2d at 1138 (workers' compensation law generally passes constitutional muster due to quid pro quo exchange of rights), we conclude that the act's compelled adjudication of the underlying facts by an administrative body does not offend the separation of powers doctrine embodied in Part I, Article 37. Compare *Pomponio*, 106 N.H. 273, 209 A.2d 733 (statute authorizing commissioner to determine entitlement to statutory unemployment benefits, including resolution of factual disputes, did not violate separation of powers doctrine) with *Opinion of the Justices*, 87 N.H. 492, 179 A. 357 (proposed statute that would empower commissioner to decide motor vehicle common law negligence claims would violate separation of powers doctrine).

The petitioner also argues that RSA 281-A:42-a violates Part II, Article 73 because it provides for the appointment of CAB members who are not judges and serve four-year terms rather than life-time appointments. He contends that only judicial officers with life tenure can render a final judgment.

Part II, Article 73 states in pertinent part:

[A]ll judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior except those for whom a different provision is made in this constitution.

When the legislature gives decision-making authority to an administrative board without violating Part I, Article 37, that board has a "dual character" in which [732 A.2d 1031] some of its acts "are within the legislative

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or administrative area and others have the effect of a judgment." *Petition of Boston & Maine Corp.*, 109 N.H. 324, 327, 251 A.2d 332, 335 (1969). Such an administrative board is permitted to resolve issues of fact, see *Pomponio*, 106 N.H. at 275, 209 A.2d at 734-35; *Cloutier*, 92 N.H. at 202-03, 28 A.2d at 557, and render a decision affecting private rights that has "the same force of obligation and finality as a judicial one," *Petition of Boston & Maine Corp.*, 109 N.H. at 327, 251 A.2d at 336 (quotation omitted). Accordingly, the petitioner's contention that the composition of the CAB violates Part II, Article 73 because the members are not duly appointed judicial officers serving life terms lacks merit and warrants no further discussion.

Finally, in his reply brief, the petitioner argues for the first time that RSA 281-A:42-a violates the due process and equal protection provisions of the State Constitution. Because he failed to address these constitutional arguments in his initial brief, we deem them waived. See *Panas v. Harakis & K-Mart Corp.*, 129 N.H. 591, 617-18, 529 A.2d 976, 992 (1987).

III

The petitioner argues that RSA 281-A:42-a, I, which mandates the composition of the CAB, violates the State Constitution by compelling him to appear before inherently biased board members. He identifies a two-fold bias. First, he asserts that two of the three CAB members who, as required by the statute, "represent[] labor" and "represent[] employers or workers' compensation insurers," RSA 281-A:42-a, I (Supp.1998), are influenced by their respective connection to organized labor and employers or insurance carriers. Second, he argues that all three board members, the third being an attorney, see *id.*, "have a financial interest in creating a work load which may grow if each makes decisions favorable to insurance carriers." We find neither assertion persuasive.

"Administrative officials [who] serve in an adjudicatory capacity are presumed to be of conscience and capable of reaching a just and fair result." *Appeal of Dell*, 140 N.H. 484, 492, 668 A.2d 1024, 1032 (1995) (quotation omitted). "The burden is upon the party alleging bias to present sufficient evidence to rebut this presumption." *Id.* (quotation omitted). Hence, the burden is on the petitioner to demonstrate that a particular CAB member has a disqualifying interest in his case, i.e., "a direct personal or pecuniary interest that is immediate, definite, and capable of demonstration," or a "connection with the parties in interest, as would be likely, improperly, to

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influence his or her judgment." *Appeal of Hurst*, 139 N.H. 702, 704, 660 A.2d 1143, 1144-45 (1995) (quotation and brackets omitted).

We fail to appreciate how the CAB members' general connection to labor, employers, or insurance carriers creates a bias per se. While RSA 281-A:42-a, I, requires one CAB member to

"represent" labor and another to "represent" employers or workers' compensation insurers, it would be improvident to conclude that the statute required such members to affirmatively advocate a particular position when rendering a decision on a claim before them. The statute cannot fairly be read to establish a tribunal that by its very composition is incapable of impartial judgment. See generally Appeal of Murray, 142 N.H. 910, 913, 714 A.2d 222, 224 (1998) (court will not interpret workers' compensation statute to lead to absurd result). The composition of the CAB was no doubt designed to enhance its appearance as an impartial body, not undercut it. Interpreting the statute as the petitioner invites would directly conflict with its mandate:

No person who is an interested party or an employee of an interested party shall participate as a member of the panel. The board shall conduct its proceedings in such a manner as to ensure a fair and impartial hearing.

RSA 281-A:42-a, I; see generally *Sprague Energy Corp. v. Town of Newington*, 142 N.H. 804, 806, 710 A.2d 1005, 1006 (1998)

[732 A.2d 1032] (statutes should be construed so that they do not contradict each other).

Therefore, the petitioner's general allegation of bias lacks merit.

Further, the petitioner summarily asserts that the CAB members have a financial interest, presumably through per diem compensation, "in creating a work load which may grow if each makes decisions favorable to insurance carriers." We fail to discern, and the petitioner fails to demonstrate, how per diem compensation creates a bias in favor of one party over another. Additionally, the petitioner does not allege that any particular CAB member who decided his claim had a disqualifying pecuniary interest. See Appeal of Hurst, 139 N.H. at 704, 660 A.2d at 1144-45. His summary allegation of inappropriate financial interest, standing alone, will not sustain a claim of bias. Due to the cursory nature of his argument, we will not consider it further. *Cf. Fothergill v. Seabreeze Condos.*, 141 N.H. 115, 118, 677 A.2d 696, 698 (1996).

Absent demonstrated prejudice caused by a board member's personal or pecuniary interest in his case, the petitioner's general allegations of compositional bias fail, and the alleged constitutional violations likewise fail.

IV

The petitioner advances several arguments attacking the merits of the CAB's decision reducing his benefits. He first argues that the hearing officer's unappealed decision that he was entitled to vocational rehabilitation conclusively determined his incapacity to work and thus his status as temporarily totally disabled. We reject this argument.

This court is the final arbiter of the meaning of a statute, *Linteau v. Gauthier*, 142 N.H. 460, 461, 703 A.2d 266, 267 (1997), as expressed by the words in the statute itself, *Sprague Energy Corp.*, 142 N.H. at 806, 710 A.2d at 1006. We interpret a statute to lead to a reasonable result and review a particular provision, not in isolation, but together with all associated sections. *Id.*

Under the act, an injured employee is entitled to temporary total disability benefits after "sustaining a personal injury which is totally disabling, but temporary in nature, and the employee is unable to return to work, but has not achieved maximum medical improvement." RSA 281-A:28 (Supp.1998) (emphasis added). Such benefits, however, may be subsequently reduced if a "change in conditions" demonstrates that the injured employee "is physically able to perform his or

her regular work or is able to engage in gainful employment." RSA 281-A:48, I, II(b), III (Supp.1998).

An employee is entitled to vocational rehabilitation services when "as a result of an injury covered by [the act], an employee is unable to perform work for which he or she has previous training or experience." RSA 281-A:25, I (Supp.1998) (emphasis added). While the hearing officer must have determined that the petitioner was "unable to perform work for which he ... [had] previous training or experience" to award him vocational rehabilitation services, this finding does not conclusively establish that he was also "unable to return to work" in accordance with temporary total disability status under RSA 281-A:28, I. The finding is equally consistent with partial disability status in which an employee is "able to return to work," RSA 281-A:31, :31-a (Supp.1998), but perhaps not the "work for which he or she [had] previous training or experience," RSA 281-A:25, I. The purpose of providing an injured employee vocational rehabilitation services is "to restore such employee to suitable employment" and "to render the employee fit for a remunerative occupation." RSA 281-A:25, I. By its statutory terms, such services could be awarded, and would reasonably benefit, those injured employees who are temporarily totally disabled and thus are "unable to return to work," as well as those who

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are partially disabled and thus "able to return [732 A.2d 1033] to work" but not necessarily in their full or former capacity. Accordingly, the hearing officer's unappealed award of vocational rehabilitation benefits is not conclusive of a temporarily totally disabled status.

V

The petitioner argues that the CAB wrongfully placed the burden on him to prove his continuing eligibility for temporary total disability benefits. He asserts that Appeal of Elliott, 140 N.H. 607, 675 A.2d 204 (1996), provides that the party requesting a hearing predicated upon a "change in conditions" under RSA 281-A:48, the respondents in this case, bears the burden of proving such change. He thus contends that the CAB erred as a matter of law when it ruled that "[o]nce the carrier has shown a change in circumstances, the burden of proving he is eligible for benefits shifts back to the Claimant."

Under RSA 281-A:48, I, "any party at interest ... may petition the commissioner to review ... an award of compensation ... upon the ground of a change in conditions," and as a result, the commissioner can enter an order diminishing the compensation previously paid, see RSA 281-A:48, II(b). In Appeal of Elliott, we placed the burden of proving a "change in conditions" on the party asserting the change, and the respondents do not dispute that they were obliged to satisfy this burden. They contend, however, that the general rule created by Appeal of Elliott includes a burden shift to the claimant to show "continuing entitlement to total disability benefits." The respondents' interpretation of Appeal of Elliott, however, is incorrect.

In Appeal of Elliott, we stated:

The burden of proof of showing a change in condition is normally on the party, whether claimant or employer, asserting the change, although, in some cases, the burden may shift to the other party once the movant has established his case.

140 N.H. at 610, 675 A.2d at 206 (quotation omitted and emphasis added). We thereby

established that as a general rule, the burden of proof remains on the moving party to show a change in condition, and merely alluded to the possibility of exceptions, which were not present or at issue in that case. The respondents do not point to any circumstances in this case, or cite supporting legal authority, to warrant our consideration of an exception to the

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general rule. Therefore, we review the CAB's decision under the general rule established by Appeal of Elliott.

In the analysis portion of the CAB's order entitled "DECISION," it stated that the carrier has presented sufficient evidence of change in conditions since the claimant's work related injury in 1994 to support a reduction in benefits from temporary total disability to the diminished earnings capacity rate.

(Emphasis added.) In denying a number of the petitioner's requests for findings and rulings, however, the CAB stated:

Once the carrier has shown a change in circumstances, the burden of proving he is eligible for benefits shifts back to the claimant. Here the claimant has not [met] the burden.

(Emphasis added.) Therefore, while the CAB correctly placed the burden of proving a change in condition or circumstances on the respondents, the latter statement reveals that it believed the petitioner bore some burden of proof on the ultimate issue before it, i.e., the respondents' requested reduction in benefits. This approach conflicts with the general rule under Appeal of Elliott. Moreover, the CAB did not identify any circumstances that warrant an exception to the general rule. Accordingly, we reverse the CAB on this issue and remand.

Because we remand this matter for a new hearing, we need not address the [732 A.2d 1034] petitioner's remaining arguments that the CAB failed to recognize his specific work restrictions or failed to consider whether there was a reasonably stable labor market for his abilities.

Decision of the superior court is affirmed; decision of the compensation appeals board is reversed and remanded.

All concurred.

Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 647-FN

BILL TITLE: relative to appeals from the compensation appeals board.

DATE: February 26, 2013

LOB ROOM: 307

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Tanner

Seconded by Rep. Richardson

Vote: 12-6 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Linda A. DiSilvestro, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 647-FN

BILL TITLE: relative to appeals from the compensation appeals board.

DATE: 2/26/13

LOB ROOM: 307

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *Tanner*

Seconded by Rep. *Richardson*

Vote: *12/6* (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Linda A. DiSilvestro, Clerk



2013 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: 647 Title: appeals from the compensation appeal Board
PH Date: 2, 19, 13 Exec Session Date: 2, 26, 13
Motion: OTP Amendment #: _____

MEMBER	YEAS	NAYS
White, Andrew A, Chairman	Y	
Kelly, Sally H, V Chairman	Y	
Weed, Charles F	Y	
Rice, Chip L	Y	
Coulombe, Gary M	Y	
Andrews, Christopher R	Y	
Cahill, Michael D	Y	
DiSilvestro, Linda A, Clerk	Y	
Ley, Douglas A	Y	
Schmidt, Janice E	Y	
Tanner, Linda L	Y	
Daniels, Gary L,		N
Infantine, William J,	<i>absent</i>	
Richardson, Herbert D		N
Pellegrino, Tony J		N
Sedensky, John B,		N
Flanagan, Jack B		N
Burchell, Richard B		N
Emerick, J. Tracy	Y	
St.James, Kevin P	<i>absent</i>	
TOTAL VOTE:		

12 6

Committee Report

REGULAR CALENDAR

February 28, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on LABOR, INDUSTRIAL AND
REHABILITATIVE SERVICES to which was referred

HB647-FN,

**AN ACT relative to appeals from the compensation
appeals board. Having considered the same, report the
same with the recommendation that the bill OUGHT TO
PASS.**

Rep. Linda L Tanner

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES
Bill Number:	HB647-FN
Title:	relative to appeals from the compensation appeals board.
Date:	February 28, 2013
Consent Calendar:	NO
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill allows parties aggrieved by an order or decision of the Compensation Appeals Board to further appeal to issues of law only to the Superior Court as an alternative to the Supreme Court. At the present time such challenges are allowed to the Supreme Court only and are rarely accepted to be heard. The additional option of the Superior Court appeal provides a more accessible venue and a lower cost for these challenges.

Vote 12-6.

Rep. Linda L Tanner
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

HB647-FN, relative to appeals from the compensation appeals board. **OUGHT TO PASS.**

Rep. Linda L Tanner for LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES. This bill allows parties aggrieved by an order or decision of the Compensation Appeals Board to further appeal to issues of law only to the Superior Court as an alternative to the Supreme Court. At the present time such challenges are allowed to the Supreme Court only and are rarely accepted to be heard. The additional option of the Superior Court appeal provides a more accessible venue and a lower cost for these challenges. **Vote 12-6.**

Original: House Clerk

Cc: Committee Bill File

HB 647

Majority

OTP

This bill allows parties aggrieved by an order or decision of the Compensation Appeals Board to further appeal to issues of law only to the Superior Court as an alternative to the Supreme Court. At the present time such challenges are allowed to the Supreme Court only and are rarely accepted to be heard. The additional option of the Superior Court appeal provides a more accessible venue and a lower cost for these challenges.

Linda Tanner

COMMITTEE REPORT

COMMITTEE: Labor

BILL NUMBER: HB 647

TITLE: Relative to appeals from the Compensation Appeals Board of

DATE: _____ CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

This bill allows parties aggrieved by an order or decision of the Compensation ~~Board of~~ ^{Appeals Board} to further appeal to issues of law ^{only} to the Superior Court as an alternative to the Supreme Court. At the present time such challenges are allowed to the Supreme Court only and are rarely accepted to be heard. The additional option of the Superior Court appeal provides a more accessible venue and a lower cost for these challenges.

COMMITTEE VOTE: 12-6

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Sandra Janner
For the Committee