

shall make every reasonable effort to promptly investigate each complaint made under this subsection.

(b) List of persons disqualified from representing claimants

(1) No representation fee of a claimant's representative shall be approved by the deputy commissioner, an administrative law judge, the Board, or a court pursuant to section 928 of this title, if the claimant's representative is on the list of individuals who are disqualified from representing claimants under this chapter maintained by the Secretary pursuant to paragraph (2) of this subsection.

(2)(A) The Secretary shall annually prepare a list of those individuals in each compensation district who have represented claimants for a fee in cases under this chapter and who are not authorized to represent claimants. The names of individuals contained on the list required under this subparagraph shall be made available to employees and employers in each compensation district through posting and in such other forms as the Secretary may prescribe.

(B) Individuals shall be included on the list of those not authorized to represent claimants under this chapter if the Secretary determines under this section, in accordance with the procedure provided in subsection (j) of section 907 of this title, that such individual—

(i) has been convicted (without regard to pending appeal) of any crime in connection with the representation of a claimant under this chapter or any workers' compensation statute;

(ii) has engaged in fraud in connection with the presentation of a claim under this or any workers' compensation statute, including, but not limited to, knowingly making false representations, concealing or attempting to conceal material facts with respect to a claim, or soliciting or otherwise procuring false testimony;

(iii) has been prohibited from representing claimants before any other workers' compensation agency for reasons of professional misconduct which are similar in nature to those which would be grounds for disqualification under this paragraph; or

(iv) has accepted fees for representing claimants under this chapter which were not approved, or which were in excess of the amount approved pursuant to section 928 of this title.

(C) Notwithstanding subparagraph (B), no individual who is on the list required to be maintained by the Secretary pursuant to this section shall be prohibited from presenting his or her own claim or from representing without fee, a claimant who is a spouse, mother, father, sister, brother, or child of such individual.

(D) A determination under subparagraph (A) shall remain in effect for a period of not less than three years and until the Secretary finds and gives notice to the public that there is reasonable assurance that the basis for the determination will not reoccur.

(3) No employee shall be liable to pay a representation fee to any representative whose fee has been disallowed by reason of the operation of this paragraph.

(4) The Secretary shall issue such rules and regulations as are necessary to carry out this section.

(c) False statements or representation to reduce, deny, or terminate benefits

A person including, but not limited to, an employer, his duly authorized agent, or an employee of an insurance carrier who knowingly and willfully makes a false statement or representation for the purpose of reducing, denying, or terminating benefits to an injured employee, or his dependents pursuant to section 909 of this title if the injury results in death, shall be punished by a fine not to exceed \$10,000, by imprisonment not to exceed five years, or by both.

(Mar. 4, 1927, ch. 509, §31, 44 Stat. 1439; Pub. L. 98-426, §19, Sept. 28, 1984, 98 Stat. 1650.)

AMENDMENTS

1984—Pub. L. 98-426 designated existing provisions as subsec. (a)(1), substituted "Any claimant or representative of a claimant who knowingly and willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under this chapter shall be guilty of a felony, and on conviction thereof shall be punished by a fine not to exceed \$10,000, by imprisonment not to exceed five years, or by both" for "Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this chapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed \$1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment", and added subsecs. (a)(2), (b), and (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 932. Security for compensation

(a) Every employer shall secure the payment of compensation under this chapter—

(1) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund, while such person or fund is authorized (A) under the laws of the United States or of any State, to insure workmen's compensation, and (B) by the Secretary, to insure payment of compensation under this chapter; or

(2) By furnishing satisfactory proof to the Secretary of his financial ability to pay such compensation and receiving an authorization from the Secretary to pay such compensation directly. The Secretary may, as a condition to such authorization, require such employer to deposit in a depository designated by the Secretary either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the Secretary, based on the employer's financial condition, the employer's previous record of payments, and other relevant factors, and subject to such conditions as the Secretary may prescribe, which shall include authorization to the Secretary in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this

chapter. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of compensation under this chapter the Secretary may take into consideration the recommendation of any State authority having supervision over carriers or over workmen's compensation, and may authorize any carrier to insure the payment of compensation under this chapter in a limited territory. Any marine protection and indemnity mutual insurance corporation or association, authorized to write insurance against liability for loss or damage from personal injury and death, and for other losses and damages, incidental to or in respect of the ownership, operation, or chartering of vessels on a mutual assessment plan, shall be deemed a qualified carrier to insure compensation under this chapter. The Secretary may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

(Mar. 4, 1927, ch. 509, §32, 44 Stat. 1439; Pub. L. 98-426, §§20, 27(a)(2), Sept. 28, 1984, 98 Stat. 1652, 1654.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-426, §27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsec. (a)(2). Pub. L. 98-426, §20, inserted "based on the employer's financial condition, the employer's previous record of payments, and other relevant factors," after "in an amount determined by the commission,".

Pub. L. 98-426, §27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

Subsec. (b). Pub. L. 98-426, §27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 933. Compensation for injuries where third persons are liable

(a) Election of remedies

If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer or a person or persons in his employ is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person.

(b) Acceptance of compensation operating as assignment

Acceptance of compensation under an award in a compensation order filed by the deputy commissioner, an administrative law judge, or the Board shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six

months after such acceptance. If the employer fails to commence an action against such third person within ninety days after the cause of action is assigned under this section, the right to bring such action shall revert to the person entitled to compensation. For the purpose of this subsection, the term "award" with respect to a compensation order means a formal order issued by the deputy commissioner, an administrative law judge, or Board.

(c) Payment into section 944 fund operating as assignment

The payment of such compensation into the fund established in section 944 of this title shall operate as an assignment to the employer of all right of the legal representative of the deceased (hereinafter referred to as "representative") to recover damages against such third person.

(d) Institution of proceedings or compromise by assignee

Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Recoveries by assignee

Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to—

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner or Board);

(B) the cost of all benefits actually furnished by him to the employee under section 907 of this title;

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Secretary, and the present value of the cost of all benefits thereafter to be furnished under section 907 of this title, to be estimated by the deputy commissioner, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative.

(f) Institution of proceedings by person entitled to compensation

If the person entitled to compensation institutes proceedings within the period prescribed in subsection (b) of this section the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the