CHAPTER 11

Occupational Diseases

**SECTION 42‑11‑10.** “Occupational disease” defined.

(A) “Occupational disease” means a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged. A disease is considered an occupational disease only if caused by a hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of continuous exposure to the normal working conditions of that particular trade, process, occupation, or employment. In a claim for an occupational disease, the employee shall establish that the occupational disease arose directly and naturally from exposure in this State to the hazards peculiar to the particular employment by a preponderance of the evidence.

(B) No disease shall be considered an occupational disease when it:

(1) does not result directly and naturally from exposure in this State to the hazards peculiar to the particular employment;

(2) results from exposure to outside climatic conditions;

(3) is a contagious disease resulting from exposure to fellow employees or from a hazard to which the workman would have been equally exposed outside of his employment;

(4) is one of the ordinary diseases of life to which the general public is equally exposed, unless such disease follows as a complication and a natural incident of an occupational disease or unless there is continuous exposure peculiar to the occupation itself which makes such disease a hazard inherent in such occupation;

(5) is any disease of the cardiac, pulmonary, or circulatory system not resulting directly from abnormal external gaseous pressure exerted upon the body or the natural entrance into the body through the skin or natural orifices thereof of foreign organic or inorganic matter under circumstances peculiar to the employment and the processes utilized therein; or

(6) is any chronic disease of the skeletal joints.

(C) As used in this section, “medical evidence” means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

(D) No compensation shall be payable for any occupational disease unless the employee suffers a disability as described in Section 42‑9‑10, 42‑9‑20, or 42‑9‑30.

HISTORY: 1962 Code Section 72‑251; 1952 Code Section 72‑251; 1949 (46) 565; 2007 Act No. 111, Pt I, Section 24, eff July 1, 2007, applicable to injuries that occur on or after that date.

RESEARCH REFERENCES

Treatises and Practice Aids

15 Causes of Action 61, Cause of Action to Recover Workers’ Compensation Benefits for Occupational Disease.

Modern Workers’ Compensation Section 109:3, Risk Characteristic of Employment.

Modern Workers’ Compensation Section 109:4, Employment Exposure.

Modern Workers’ Compensation Section 109:10, Spine and Bone Diseases.

Modern Workers’ Compensation Section 109:11, Contagious Diseases.

Modern Workers’ Compensation Section 109:13, Lung Diseases, Generally.

Modern Workers’ Compensation Section 109:17, Heart Disease.

Modern Workers’ Compensation Section 321:14, Occupational Disease.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Workmen’s Compensation. 30 S.C. L. Rev. 177.

1981 Survey: South Carolina Workmen’s Compensation Act; Residence requirement for occupational disease compensation. 34 S.C. L. Rev. 1 (August 1982).

NOTES OF DECISIONS

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1. In general

Claimant’s partial disability from asbestosis was an “occupational disease” under workers’ compensation statute; asbestosis was caused by inhalation of asbestos dust, and asbestos dust was prevalent in his work conditions due to asbestos‑containing insulation products that employer manufactured, and, thus, was peculiar to claimant’s employment. Skinner v. Westinghouse Elec. Corp. (S.C. 2011) 394 S.C. 428, 716 S.E.2d 443, rehearing denied. Workers’ Compensation 549.2

The occupational disease statute within the Workers’ Compensation Act is satisfied where the claimant is able to show simply that the employment increased the risk of the disease. Pee v. AVM, Inc. (S.C. 2002) 352 S.C. 167, 573 S.E.2d 785. Workers’ Compensation 547

A claimant must prove the following six elements in order to receive Workers’ Compensation benefits for having contracted an occupational disease: (1) a disease; (2) the disease must arise out of and in the course of the claimant’s employment; (3) the disease must be due to hazards in excess of those hazards that are ordinarily incident to employment; (4) the disease must be peculiar to the occupation in which the claimant was engaged; (5) the hazard causing the disease must be one recognized as peculiar to a particular trade, process, occupation, or employment; and (6) the disease must directly result from the claimant’s continuous exposure to the normal working conditions of the particular trade, process, occupation, or employment. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 547

Workers’ compensation claimant’s three days of work as lead carpenter with employer was the same kind as that which had caused his occupational disease of aseptic necrosis of the carpal lunate resulting from over 20 years of use of vibratory and other tools as a carpenter and, thus, was of a kind contributing to the disease. Reese v. CCI Const. Co. (S.C.App. 1999) 334 S.C. 600, 514 S.E.2d 144, rehearing denied. Workers’ Compensation 201

A claimant must prove the following elements, by a preponderance of the evidence, to recover benefits for contraction of an occupational disease: (1) a disease, (2) that the disease arose out of and in the course of the claimant’s employment, (3) that the disease is due to hazards in excess of those hazards that are ordinarily incident to employment, (4) that the disease is peculiar to the occupation in which the claimant was engaged, (5) that the hazard causing the disease is one recognized as peculiar to a particular trade, process, occupation, or employment, and (6) that the disease directly resulted from the claimant’s continuous exposure to the normal working conditions of the particular trade, process, occupation, or employment. Fox v. Newberry County Memorial Hosp. (S.C.App. 1994) 316 S.C. 537, 451 S.E.2d 28, rehearing denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392.

In order to qualify as an occupational disease under the Occupational Disease Act, Sections 42‑11‑10 et seq., the claimant must establish that the disease is due to hazards in excess of those hazards that are ordinarily incident to employment; to do so, the evidence need only demonstrate that the worker was exposed to a greater risk by reason of her employment than the general public. Fox v. Newberry County Memorial Hosp. (S.C.App. 1994) 316 S.C. 537, 451 S.E.2d 28, rehearing denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392.

Under Section 42‑11‑10 of the Occupational Disease Act, the phrase “peculiar to the occupation” does not mean the disease must either originate exclusively from or be unique to the particular kind of employment in which the employee is engaged, nor does it mean the disease must be one not otherwise found among the general public; instead, the claimant must only show the disease is either directly caused by, especially incident to, or the natural consequence of, the work in question. Fox v. Newberry County Memorial Hosp. (S.C.App. 1994) 316 S.C. 537, 451 S.E.2d 28, rehearing denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392. Workers’ Compensation 548

A disease that meets the definition and requirement under South Carolina law of an occupational disease should be treated as compensable regardless of the fact that it might qualify as an injury by accident; thus, in determining whether a disease is compensable, the inquiry is not focused on whether the disease arose form a single accidental contact, but whether the disease is distinctively associated with employment as defined in Section 42‑11‑10. Fox v. Newberry County Memorial Hosp. (S.C.App. 1994) 316 S.C. 537, 451 S.E.2d 28, rehearing denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392.

In order to receive worker’s compensation benefits for having contracted an occupational disease, a claimant must prove (1) a disease (2) arising out of or in the course of claimant’s employment (3) due to hazards in excess of those hazards that are ordinarily incident to employment, (4) a disease that is peculiar to the occupation in which the claimant was engaged, (5) a hazard causing disease that is one recognized as peculiar to a particular trade, process, occupation, or employment, and (6) a disease that directly resulted from claimant’s continuous exposure to the normal working conditions of the particular trade, process, occupation or employment. Mohasco Corp., Dixiana Mill Div. v. Rising (S.C.App. 1986) 289 S.C. 130, 345 S.E.2d 249, reversed 292 S.C. 489, 357 S.E.2d 456. Workers’ Compensation 547

The phrase “peculiar to the occupation” used in Section 42‑11‑10 in defining the term “occupational disease” does not mean that the disease must either originate exclusively from or be unique to the particular kind of employment in which the employee is engaged before it can be considered an “occupational disease,” nor does the phrase mean that the disease must be one not otherwise found among the general public, but rather, a disease “is peculiar to the occupation in which the employee is engaged” if the disease is either directly caused by, especially incident to, or the natural consequence of the work in question. Mohasco Corp., Dixiana Mill Div. v. Rising (S.C.App. 1986) 289 S.C. 130, 345 S.E.2d 249, reversed 292 S.C. 489, 357 S.E.2d 456. Workers’ Compensation 547

Before a disease can be considered an occupational disease, it must be one caused by the worker’s exposure to hazards greater than those involved in ordinary occupations. Mohasco Corp., Dixiana Mill Div. v. Rising (S.C.App. 1986) 289 S.C. 130, 345 S.E.2d 249, reversed 292 S.C. 489, 357 S.E.2d 456. Workers’ Compensation 547

The claimant must show a causal connection between his or her alleged occupational disease and the conditions of the employment in which the claimant was engaged. Mohasco Corp., Dixiana Mill Div. v. Rising (S.C.App. 1986) 289 S.C. 130, 345 S.E.2d 249, reversed 292 S.C. 489, 357 S.E.2d 456.

In an occupational disease claim which arose prior to 1977, a worker who had been employed in the textile industry for 17 years in North Carolina and for nine months in South Carolina contracted byssinosis for jurisdictional purposes when she was disabled by the disease some nine months after she commenced work in this state since the one‑year exposure requirement in Section 42‑11‑60 refers to exposure in the same type of employment, and not exposure in this state. Vespers v. Springs Mills, Inc. (S.C. 1981) 276 S.C. 94, 275 S.E.2d 882. Workers’ Compensation 551

A disease caused by or aggravated by atmospheric conditions is compensable if the employee faced a greater risk of exposure due to his employment. Sturkie v. Ballenger Corp. (S.C. 1977) 268 S.C. 536, 235 S.E.2d 120.

Where an employee who was forced to work in an open cab truck in a climate where he was exposed to high humidity, fog, high temperatures, cement dust and short rain showers occurring several times a day, and caught emphysema, and medical testimony indicated that environmental and working conditions probably caused the disease, an award of workmen’s compensation would be affirmed. Sturkie v. Ballenger Corp. (S.C. 1977) 268 S.C. 536, 235 S.E.2d 120. Workers’ Compensation 1509

Compensability, and therefore liability, is founded upon disability, not injury, under the Code sections relating to occupational diseases. Glenn v. Columbia Silica Sand Co. (S.C. 1960) 236 S.C. 13, 112 S.E.2d 711.

In occupational disease cases compensability accrues when disability (in case of pulmonary disease arising out of the inhalation of organic or inorganic dust, total disability) or death occurs. Glenn v. Columbia Silica Sand Co. (S.C. 1960) 236 S.C. 13, 112 S.E.2d 711.

2. Construction with other laws

Code provisions relating to occupational diseases should be construed together, and in relation to the other provisions of this Title to which reference is made in Code 1962 Section 72‑253, and which deal with compensation for disability or death resulting from accident arising out of and in the course of the employment. Glenn v Columbia Silica Sand Co. (1960) 236 SC 13, 112 SE2d 711. Drake v Raybestos‑Manhattan, Inc. (1962) 241 SC 116, 127 SE2d 288.

Specific workers’ compensation provision governing compensability of pulmonary disease controlled, in proceeding in which claimant sought benefits for asbestosis, over the more general provisions allowing for compensation to be paid to an employee with an occupational disease who suffers from a disability. Skinner v. Westinghouse Elec. Corp. (S.C. 2011) 394 S.C. 428, 716 S.E.2d 443, rehearing denied. Workers’ Compensation 549.2

3. Past claims

That previous and current occupational disease claims were caused by exposure to same toxic chemicals at work did not preclude claimant, under doctrine of res judicata, from pursuing current claim, absent medical or other evidence demonstrating that previous claim for dermatitis and chemical burns was the same as current claim for chronic toxic chemical intoxication. Rogers v. Kunja Knitting Mills, U.S.A. (S.C.App. 1999) 336 S.C. 533, 520 S.E.2d 815, rehearing denied. Workers’ Compensation 1791

That occupational disease for which claimant currently sought workers’ compensation benefits may have resulted from same disease process as occupational disease for which claimant previously sought benefits did not bar current claim, on res judicata grounds, where occupational diseases claimed were separate and distinct. Rogers v. Kunja Knitting Mills, U.S.A. (S.C.App. 1999) 336 S.C. 533, 520 S.E.2d 815, rehearing denied. Workers’ Compensation 1791

4. Parties

Employer was not entitled to have workers’ compensation claimant’s previous employer added as a party to claim for occupational disease, though claimant performed the same work of inspecting used catheters for previous employer and did not wear gloves while doing so for previous employer, where internal medicine expert opined that claimant developed hepatitis C after his employment with previous employer, and evidence demonstrated that claimant was exposed even while wearing gloves during employment with employer when gloves tore, leaked, or when he punctured himself with scissors, knives, or needles he was using to dissect catheters. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1196

5. Presumptions and burden of proof

As in all workers’ compensation cases the burden is upon the claimant in an occupational disease case to prove such facts as will entitle the claimant to compensation. Mohasco Corp., Dixiana Mill Div. v. Rising (S.C.App. 1986) 289 S.C. 130, 345 S.E.2d 249, reversed 292 S.C. 489, 357 S.E.2d 456.

6. Sufficiency of evidence

Substantial evidence supported Workers’ Compensation Commission’s finding that claimant sustained occupational disease of silicosis resulting from prolonged exposure to silica dust in workplace and was permanently and totally disabled; testimony of medical expert who was specialist in field and who had treated claimant more than any other doctor was entitled to greater weight than testimony of doctors who saw claimant once or never saw him and only reviewed records of other doctors. Corbin v. Kohler Co. (S.C.App. 2002) 351 S.C. 613, 571 S.E.2d 92. Workers’ Compensation 1419; Workers’ Compensation 1530.3(2); Workers’ Compensation 1646.9

Finding that workers’ compensation claimant contracted hepatitis C as a result of his exposure to contaminated blood and bodily fluids while examining used catheters during his employment was supported by statement of doctor that transmission from needle sticks had been documented, by testimony of another doctor that the most probable origin of hepatitis C was contamination through bodily fluid on catheters, and by testimony of another physician that claimant most probably contracted hepatitis C from a catheter contaminated with the blood of an infected person. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1497

Finding of causal link between workers’ compensation claimant’s job of inspecting used catheters and his contraction of hepatitis C was supported by sufficient expert testimony; claimant’s family doctor testified that the most probable origin of claimant’s hepatitis C was contamination via bodily fluids with which he came into contact while working with catheters, an internal medicine, hematology, and oncology expert testified that the most likely area for claimant to have contracted hepatitis C was from the catheters, another internal medicine expert testified that claimant most probably contracted the disease from an infected urinary catheter, and a clinical pathology expert testified that, to a reasonable degree of medical certainty, claimant most probably contracted disease from his occupational exposure to contaminated medical devices. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1419

Finding that workers’ compensation claimant’s aplastic anemia and myelodysplasia were caused by the hepatitis C he contracted during course of his employment while inspecting used catheters was supported by testimony of specialist in internal medicine, hematology, and oncology that hepatitis C was the most common cause of aplastic anemia and myelodysplasia and by report of clinical pathologist that claimant’s clinical diagnosis was consistent with aplastic anemia and myelodysplasia and that there was medical literature associating hepatitis C with aplastic anemia and associating aplastic anemia with progression to myelodysplasia. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1419

The evidence supported the master’s finding that a nurse received a herpetic infection where the nurse testified that she was regularly in physical contact with patients having fever blisters (a herpetic infection), and an internist testified that this situation constituted a hazard in excess of those hazards of ordinary living or ordinary occupations. Fox v. Newberry County Memorial Hosp. (S.C.App. 1994) 316 S.C. 537, 451 S.E.2d 28, rehearing denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392.

In an action by a nurse for workers’ compensation arising from the contraction of a herpetic infection, substantial evidence existed to show herpetic whitlow is a disease peculiar to the medical profession, where 2 doctors testified that herpetic whitlow is more common in the medical profession because of the greater risk or exposure and contact to herpetic lesions. Fox v. Newberry County Memorial Hosp. (S.C.App. 1994) 316 S.C. 537, 451 S.E.2d 28, rehearing denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392.

In a workers’ compensation action, the evidence supported the master’s conclusion that a nurse’s herpes resulted from her continuous exposure to the fever blisters of her patients where the worker testified that she used the index finder of her left hand to detach the expendable tips from hospital thermometers, and many patients, especially in the summer, have fever blisters. Fox v. Newberry County Memorial Hosp. (S.C.App. 1994) 316 S.C. 537, 451 S.E.2d 28, rehearing denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392.

7. Review

The Court of Appeals erred in determining that the record supported a Workers’ Compensation Commission’s finding that herpetic whitlow was an occupational disease where the Commission failed to find whether the disease was due to the peculiar occupation in which the claimant was engaged; in such cases, the Court of Appeals is obliged to remand the matter to the Commission for further findings of fact. Fox v. Newberry County Memorial Hosp. (S.C. 1995) 319 S.C. 278, 461 S.E.2d 392.

The Circuit Court cannot substitute its own judgment on the weight of evidence when determining whether the record contains substantial evidence to support findings of the Workers’ Compensation Commission. Fox v. Newberry County Memorial Hosp. (S.C.App. 1994) 316 S.C. 537, 451 S.E.2d 28, rehearing denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392. Workers’ Compensation 1939.6

Under the Circuit Court’s scope of review, the Workers’ Compensation Commission’s award of compensation arising out of an occupational disease must be affirmed if supported by substantial evidence in the record; substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly form one side of the case, but it is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the commission reached to justify its action. Fox v. Newberry County Memorial Hosp. (S.C.App. 1994) 316 S.C. 537, 451 S.E.2d 28, rehearing denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392.

Legal error controlled Industrial Commission’s finding that the worker’s compensation claimants suffered from an occupational disease where the commission’s finding failed to find on the critical issue as to whether the claimants had proved that their lung disease was caused by a hazard recognized as peculiar to a particular trade, process, occupation or employment, and the case would be reversed and remanded to the Circuit Court for the purpose of entering an appropriate order remanding the cases to the Industrial Commission for a determination of the issue. Mohasco Corp., Dixiana Mill Div. v. Rising (S.C.App. 1986) 289 S.C. 130, 345 S.E.2d 249, reversed 292 S.C. 489, 357 S.E.2d 456.

**SECTION 42‑11‑20.** “Disablement” and “disability” defined.

As used in this chapter, “disablement” means the event of an employee’s becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease, “partial disability” means the physical inability to continue work in such occupation only and “total disability” means the physical inability to perform work in any occupation. The disablement and disability of an employee from an occupational disease shall be determined as provided in this chapter.

HISTORY: 1962 Code Section 72‑252; 1952 Code Section 72‑252; 1949 (46) 565.

RESEARCH REFERENCES

Treatises and Practice Aids

15 Causes of Action 61, Cause of Action to Recover Workers’ Compensation Benefits for Occupational Disease.

Modern Workers’ Compensation Section 200:2, Disability.

NOTES OF DECISIONS

In general 1

Legal malpractice 2

1. In general

Where the record contained evidence which allowed reasonable minds to conclude that the claimant was disabled by cotton dust from working in her previous occupation (as a textile mills worker), but not from working in any occupation, she was not entitled to compensation for total disability under Section 42‑11‑20. Koon v. Spartan Mills (S.C.App. 1985) 286 S.C. 190, 332 S.E.2d 544.

The Industrial Commission properly determined that it lacked jurisdiction over a claim for permanent general disability due to byssinosis and loss of hearing caused by the loud noise in a weaving room where it was clear that the claimant contracted byssinosis while employed in Georgia. Grice v. Graniteville Co. (S.C. 1982) 278 S.C. 461, 298 S.E.2d 446. Workers’ Compensation 551

2. Legal malpractice

Workers could not prove they lost wages due to their asbestosis in order to establish right to compensation, and thus they did not have viable workers’ compensation claims under South Carolina law and personal injury attorneys pursuing asbestos claims on their behalf were not negligent in not advising them or representing them with regard to workers’ compensation claims, where workers had stopped working and were collecting Social Security payments based on disability from other conditions years before they were diagnosed with asbestosis. Southern v. Bishoff (C.A.4 (S.C.) 2017) 675 Fed.Appx. 239, 2017 WL 118016. Attorney and Client 112

Workers were not entitled to rely on their supplemental summary judgment affidavits of compensable workers’ compensation wages due to disability from asbestosis within two years of their last exposure to asbestos at employer, which they submitted nearly two months after deadline for completion of discovery, in their action against attorneys alleging malpractice, breach of contract, and breach of fiduciary duty under South Carolina law, where workers did not offer any justification whatsoever for not producing evidence on that point prior to the discovery deadline and attorneys had made timing of onset of any asbestos‑caused disability a critical issue from start of this case. Southern v. Bishoff (C.A.4 (S.C.) 2017) 675 Fed.Appx. 239, 2017 WL 118016. Federal Civil Procedure 1278; Federal Civil Procedure 1938.1

**SECTION 42‑11‑30.** . Presumptions; heart or respiratory disease as to firefighters; cardiac‑related incident as to law enforcement officers; report of physical examination required.

(A) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers’ Compensation Law, any impairment or injury to the health of a firefighter caused by heart disease or respiratory disease resulting in total or partial disability or death is presumed to have arisen out of and in the course of employment, unless the contrary is shown by competent evidence, if the firefighter is at the time of such impairment or injury a bona fide member of a municipal, county, state, port authority, or fire control district fire department in this State. In order to be entitled to the presumption provided for in this section, any person becoming a member of a fire department after May 29, 1968, must be under the age of thirty‑seven years and must have successfully passed a physical examination by a competent physician upon entering into such service or by July 1, 2012, a written report of which must have been made and filed before any alleged injury with the fire department, which examination failed to reveal any evidence of such condition or conditions, and the condition or conditions developed while actively engaged in fighting a fire or within twenty‑four hours from the date of last service in the activity.

(B)(1) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers’ Compensation Law, a cardiac‑related incident resulting in impairment or injury to a law enforcement officer resulting in total or partial disability, or death, is presumed to have arisen out of and in the course of employment if this impairment or injury developed while actively engaged in, or within twenty‑four hours from the date of, a law enforcement incident involving unusual or extraordinary physical exertion, unless the contrary is shown by competent evidence. At the time of the incident, the law enforcement officer must be employed as a law enforcement officer of a municipal, county, state, port authority, or other law enforcement agency in this State. In order to be entitled to the presumption provided by this section, a person becoming a law enforcement officer, must be under thirty‑seven years of age and upon entering into the service, must have successfully passed a physical examination which includes a risk factor assessment for coronary artery disease conducted by a competent physician who should counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor assessment. A written report of the examination must have been made and filed with the law enforcement agency, which examination must not have revealed evidence of cardiac impairment or injury. If the law enforcement officer is identified as being a high risk for coronary artery disease during the risk factor assessment and the law enforcement officer fails to undergo, at his own expense, additional medical tests related to discovery of coronary artery disease, he is not entitled to the presumption provided by this section.

(2) If a law enforcement agency cannot produce the report described in subitem (B)(1), the law enforcement officer may submit a written report of a physical examination conducted before July 1, 2012, which includes a risk factor assessment for coronary artery disease conducted by a competent physician who also shall counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor.

HISTORY: 1962 Code Section 72‑251.1; 1968 (55) 2798; 2005 Act No. 108, Section 1, eff upon approval (became law without the Governor’s signature on June 2, 2005); 2010 Act No. 126, Section 1, eff upon approval (became law without the Governor’s signature on February 25, 2010).

Library References

Workers’ Compensation 1168, 1364 to 1366.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 905, 1038, 1054 to 1055.

RESEARCH REFERENCES

Treatises and Practice Aids

15 Causes of Action 61, Cause of Action to Recover Workers’ Compensation Benefits for Occupational Disease.

Modern Workers’ Compensation Section 305:11, Work Connection‑Public Safety Personnel.

NOTES OF DECISIONS

In general 1

1. In general

A state employee did not suffer a “second injury,” for which his employer’s workers’ compensation carrier was entitled to be reimbursed, since the employee’s disability from heart disease and arteriosclerosis was the logical progression of the disease over the period of years he worked for the State Forestry Commission. State Workers’ Compensation Fund v. South Carolina Second Injury Fund (S.C.App. 1992) 310 S.C. 187, 426 S.E.2d 112, rehearing denied, certiorari granted, reversed 313 S.C. 536, 443 S.E.2d 546. Workers’ Compensation 563.7

**SECTION 42‑11‑40.** Occupational diseases treated as injuries by accident.

When employer and employee are subject to the provisions of this title, the disablement or death of an employee resulting from an occupational disease shall be treated as an injury by accident and the employee, or in case of death his dependents, shall be entitled to compensation as for an injury under this title, except as otherwise provided in this chapter, and the practice and procedure prescribed in this title shall apply to all proceedings under this chapter, except as otherwise provided in this chapter. In no case shall an employer be liable for compensation for an occupational disease unless such disease was contracted by the employee while in the employ of the employer as a direct result of the employment.

HISTORY: 1962 Code Section 72‑253; 1952 Code Section 72‑253; 1949 (46) 565.

Library References

Workers’ Compensation 550.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 358.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 109:6, Causation.

Modern Workers’ Compensation Section 321:14, Occupational Disease.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: South Carolina Workmen’s Compensation Act; Residence requirement for occupational disease compensation. 34 S.C. L. Rev. 1 (August 1982).

1982 Survey: Workmen’s Compensation law; When death by occupational disease may be considered accidental injury. 35 S.C. L. Rev. 5 (Autumn 1983).

NOTES OF DECISIONS

In general 1

Sufficiency of evidence 2

1. In general

A disease that meets the definition and requirement under South Carolina law of an occupational disease should be treated as compensable regardless of the fact that it might qualify as an injury by accident; thus, in determining whether a disease is compensable, the inquiry is not focused on whether the disease arose from a single accidental contact, but whether the disease is distinctively associated with employment as defined in Section 42‑11‑10. Fox v. Newberry County Memorial Hosp. (S.C.App. 1994) 316 S.C. 537, 451 S.E.2d 28, rehearing denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392.

In an occupational disease claim which arose prior to 1977, a worker who had been employed in the textile industry for 17 years in North Carolina and for nine months in South Carolina contracted byssinosis for jurisdictional purposes when she was disabled by the disease some nine months after she commenced work in this state since the one‑year exposure requirement in Section 42‑11‑60 refers to exposure in the same type of employment, and not exposure in this state. Vespers v. Springs Mills, Inc. (S.C. 1981) 276 S.C. 94, 275 S.E.2d 882. Workers’ Compensation 551

The Workmen’s Compensation Act does not cover diseases generally, but only occupational diseases or a disease that results from an injury by accident arising out of and in the course of employment. Cooper v. John Hancock Mut. Life Ins. Co. (S.C. 1966) 248 S.C. 534, 151 S.E.2d 668.

To construe this section [Code 1962 Section 72‑253] and Code 1962 Section 72‑303 as meaning that the liability of employer and carrier arises when an occupational disease is “contracted” would be to usurp the legislative function. Glenn v. Columbia Silica Sand Co. (S.C. 1960) 236 S.C. 13, 112 S.E.2d 711.

This section [Code 1962 Section 72‑253] declares the event to be treated “as an injury by accident” to be not contraction of the occupational disease, but “disablement or death” resulting from it. Glenn v. Columbia Silica Sand Co. (S.C. 1960) 236 S.C. 13, 112 S.E.2d 711.

2. Sufficiency of evidence

The evidence supported the determination of the Workers’ Compensation Commission that an employee’s chronic kidney stones were not the result of occupational disease from inhaling an ethylene glycol mixture where he suffered from kidney stones both before and after his employment with the employer, and his treating physician was unable to state that exposure to ethylene glycol was a causative factor in the formation of his kidney stones. Boyce‑Abel In re Estate of Boyce v. Work (S.C. 1992) 308 S.C. 234, 417 S.E.2d 597.

The Workers’ Compensation Commission properly found that the testimony of an employee’s treating physician did not meet the applicable standard for expert testimony to support the employee’s claim of occupational injury resulting from exposure to ethylene glycol where the physician admitted that he had not reviewed all of the employee’s medical records, he opined that the exposure “was a reasonably probable causal factor” in the development of the condition, and he recommended several additional studies to be performed before a final determination was made, but failed to obtain the studies. Boyce‑Abel In re Estate of Boyce v. Work (S.C. 1992) 308 S.C. 234, 417 S.E.2d 597.

**SECTION 42‑11‑50.** Limitation on compensation payable to employee disabled by both injury and occupational disease.

When an employee suffers disability from an occupational disease and also from an injury which is otherwise compensable under this title, he shall not be entitled to receive compensation for both and benefits payable shall be limited to the cause which results in the longest period of disability, either as provided under this chapter or as provided for an injury by accident arising out of and in the course of employment. In no event shall compensation payable for disability or death exceed the maximum benefits provided under this title.

HISTORY: 1962 Code Section 72‑254; 1952 Code Section 72‑254; 1949 (46) 565.

Library References

Workers’ Compensation 598.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 376 to 379, 401.

**SECTION 42‑11‑60.** Requirements for compensation for pulmonary diseases.

No compensation shall be payable for any pulmonary disease arising out of the inhalation of organic or inorganic dust or fumes unless the claimant suffers disability as described in Section 42‑9‑10 or Section 42‑9‑20 and shall not be compensable under Section 42‑9‑30; provided, however, in claims based on byssinosis the claimant must have been exposed to dust in his employment for a period of at least seven years.

HISTORY: 1962 Code Section 72‑255; 1952 Code Section 72‑255; 1949 (46) 565; 1977 Act No. 103 Section 1.

Library References

Workers’ Compensation 527.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 350.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: South Carolina Workmen’s Compensation Act; Residence requirement for occupational disease compensation. 34 S.C. L. Rev. 1 (August 1982).

NOTES OF DECISIONS

In general 1

Legal malpractice 2

1. In general

The Workers’ Compensation Act requires a compensable disability to bring claim for occupational pulmonary disease. McCraw v. Mary Black Hosp. (S.C.App. 2000) 338 S.C. 478, 527 S.E.2d 113, certiorari granted, affirmed in part, vacated in part and reversed in part 350 S.C. 229, 565 S.E.2d 286. Workers’ Compensation 538

In an occupational disease claim which arose prior to 1977, a worker who had been employed in the textile industry for 17 years in North Carolina and for nine months in South Carolina contracted byssinosis for jurisdictional purposes when she was disabled by the disease some nine months after she commenced work in this state since the one‑year exposure requirement in Section 42‑11‑60 refers to exposure in the same type of employment, and not exposure in this state. Vespers v. Springs Mills, Inc. (S.C. 1981) 276 S.C. 94, 275 S.E.2d 882. Workers’ Compensation 551

One year exposure requirement in S.C. Code Section 42‑11‑60 refers to exposure in same type of employment and not exposure in State of South Carolina. Vespers v. Springs Mills, Inc. (S.C. 1981) 276 S.C. 94, 275 S.E.2d 882.

The one‑year period mentioned in this section [Code 1962 Section 72‑255] simply limits the right to compensation by requiring, as a condition precedent to it, exposure for one year. Glenn v. Columbia Silica Sand Co. (S.C. 1960) 236 S.C. 13, 112 S.E.2d 711.

And the key to liability under this section [Code 1962 Section 72‑255] is not the exposure, but the total disability therefrom. Glenn v. Columbia Silica Sand Co. (S.C. 1960) 236 S.C. 13, 112 S.E.2d 711.

2. Legal malpractice

Workers could not prove they lost wages due to their asbestosis in order to establish right to compensation, and thus they did not have viable workers’ compensation claims under South Carolina law and personal injury attorneys pursuing asbestos claims on their behalf were not negligent in not advising them or representing them with regard to workers’ compensation claims, where workers had stopped working and were collecting Social Security payments based on disability from other conditions years before they were diagnosed with asbestosis. Southern v. Bishoff (C.A.4 (S.C.) 2017) 675 Fed.Appx. 239, 2017 WL 118016. Attorney and Client 112

Workers were not entitled to rely on their supplemental summary judgment affidavits of compensable workers’ compensation wages due to disability from asbestosis within two years of their last exposure to asbestos at employer, which they submitted nearly two months after deadline for completion of discovery, in their action against attorneys alleging malpractice, breach of contract, and breach of fiduciary duty under South Carolina law, where workers did not offer any justification whatsoever for not producing evidence on that point prior to the discovery deadline and attorneys had made timing of onset of any asbestos‑caused disability a critical issue from start of this case. Southern v. Bishoff (C.A.4 (S.C.) 2017) 675 Fed.Appx. 239, 2017 WL 118016. Federal Civil Procedure 1278; Federal Civil Procedure 1938.1

**SECTION 42‑11‑70.** Time in which disease must have been contracted.

Neither an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, except that due to exposure to ionizing radiation, unless such disease was contracted within one year after the last exposure to the hazard peculiar to his employment which caused the disease, save that in the case of a pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years.

HISTORY: 1962 Code Section 72‑256; 1952 Code Section 72‑256; 1949 (46) 565; 1963 (53) 143.

Library References

Workers’ Compensation 547 to 551.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 356 to 365.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 109:5, Last Exposure Rule.

Modern Workers’ Compensation Section 109:13, Lung Diseases, Generally.

NOTES OF DECISIONS

In general 1

1. In general

Finding that workers’ compensation claim for benefits for hepatitis C, anemia, and myelodysplasia as occupational disease complied with requirement that disease be contracted within one year after last exposure to hazard peculiar to employment which caused the disease was supported by substantial evidence, though claimant began wearing gloves eight years prior to the onset of his disease, where there was evidence that claimant’s exposure continued even after he started wearing gloves when gloves tore or leaked and when he punctured himself while dissecting catheters. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1530.3(1)

**SECTION 42‑11‑80.** Wilful misrepresentation by employee as to absence of disease; waivers.

If an employee, at the time of his employment, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of disability or death, no compensation shall be payable. If an employee who has previously suffered from an occupational disease desires to continue in an employment to which such a disease is a hazard, he may waive his right to receive further benefits for disablement or disability from such disease by written agreement approved by the commission in accordance with such rules as it may promulgate.

HISTORY: 1962 Code Section 72‑257; 1952 Code Section 72‑257; 1949 (46) 565.

Library References

Workers’ Compensation 771, 773.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 531 to 534.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 109:34, Misrepresentation Defense.

NOTES OF DECISIONS

In general 1

Construction of other laws 2

Sufficiency of evidence 3

1. In general

A claim for workers’ compensation benefits will be barred if the following factors are proven: (1) the employee must have knowingly and willfully made a false representation as to his physical condition; (2) the employer must have relied upon the false representation and this reliance must have been a substantial factor in the hiring; and (3) there must have been a causal connection between the false representation and the injury. Jones v. Georgia‑Pacific Corp. (S.C. 2003) 355 S.C. 413, 586 S.E.2d 111. Workers’ Compensation 773

Circuit Court properly dismissed worker’s compensation claim filed by employee who sustained back injury while working for respondent, where (1) claimant had previously been awarded substantial worker’s compensation benefits for permanent partial disability resulting from back injury sustained while working for former employer, (2) on subsequent job application he knowingly and wilfully made false representation that he had no physical defects or prior injuries, (3) respondent relied upon false representation in hiring claimant, and (4) record, which included claimant’s testimony that same part of back had been point of both injuries and expert medical testimony that claimant’s condition reflected cumulative effect of successive injuries, sustained finding of causal connection between two injuries. Givens v. Steel Structures, Inc. (S.C. 1983) 279 S.C. 12, 301 S.E.2d 545.

The following factors must be present before a false statement in an employment application will bar benefits under the Workmen’s Compensation Act: (1) The employee must have knowingly and wilfully made a false representation as to his physical condition. (2) The employer must have relied upon the false representation and this reliance must have been a substantial factor in the hiring. (3) There must have been a causal connection between the false representation and the injury. Cooper v. McDevitt & St. Co. (S.C. 1973) 260 S.C. 463, 196 S.E.2d 833. Workers’ Compensation 773

2. Construction of other laws

The Americans with Disabilities Act (ADA) does not trump the Cooper determination of when fraud in the application process bars the applicant’s attempt to collect worker’s compensation benefits, as the ADA permits employers to make preemployment inquiries into the ability of an applicant to perform job‑related functions. Jones v. Georgia‑Pacific Corp. (S.C. 2003) 355 S.C. 413, 586 S.E.2d 111. Civil Rights 1218(4); Workers’ Compensation 773

3. Sufficiency of evidence

Evidence supported finding that claimant committed fraud in filling out her employment application, thereby barring her claim for workers’ compensation benefits; claimant admitted that she lied on the job application and health history by failing to disclose her history of back and leg problems, employer’s human resource manager testified that employer relied on answers in application and would have tried to place claimant in a job that would not have subjected her preexisting condition to further deterioration, and claimant had documented back problems prior to her employment and her back injury while working for employer, establishing causal connection between her false representations and that injury. Jones v. Georgia‑Pacific Corp. (S.C. 2003) 355 S.C. 413, 586 S.E.2d 111. Workers’ Compensation 1598

**SECTION 42‑11‑90.** Amount of compensation when noncompensable cause or disease affects occupational disease.

When an occupational disease prolongs, accelerates or aggravates or is prolonged, accelerated or aggravated by any other cause or infirmity not otherwise compensable, the compensation payable for disability or death shall be limited to the disability which would have resulted solely from the occupational disease if there were no other such cause or infirmity and shall be computed by the proportion which the disability from occupational disease bears to the entire disability.

HISTORY: 1962 Code Section 72‑258; 1952 Code Section 72‑258; 1949 (46) 565.

Library References

Workers’ Compensation 865.2, 865.4.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 624 to 625.

RESEARCH REFERENCES

Treatises and Practice Aids

15 Causes of Action 61, Cause of Action to Recover Workers’ Compensation Benefits for Occupational Disease.

Modern Workers’ Compensation Section 109:8, Aggravation.

NOTES OF DECISIONS

In general 1

Sufficiency of evidence 2

1. In general

There was no merit to the employer’s contention that the court should have apportioned, under Section 42‑11‑90, a total disability award to an employee suffering from chronic obstructive lung disease where, although the evidence revealed that the employee had smoked a pack and a half of cigarettes a day for years, and that smoking can cause or contribute to the disease, the employer presented no evidence of the percentage of the employee’s disability that was caused by smoking. Hanks v. Blair Mills, Inc. (S.C.App. 1985) 286 S.C. 378, 335 S.E.2d 91.

Determining factor of amount of death benefits, where death caused by occupational disease and noncompensable infirmity, is proportion which disability from occupational disease bears to the entire disability and not to cause of death. Brittle v. Raybestos‑Manhattan, Inc. (S.C. 1962) 241 S.C. 255, 127 S.E.2d 884. Workers’ Compensation 865.2

2. Sufficiency of evidence

Substantial evidence supported finding that workers’ compensation claimant sustained occupational lung disease, byssinosis, from working at cotton mill for approximately 32 years, even though he smoked pack of cigarettes per day for approximately 45 years; claimant’s respiratory disease arose in course of employment, disease was due to hazards of employment which were in excess of hazards normally incident to normal employees, based on medical opinion of only doctor to definitively diagnose claimant, claimant’s respiratory disease was result of exposure to cotton dust and trash in employment, after claimant stopped smoking, his condition worsened, and tests demonstrated that work environment negatively affected his breathing. Brown v. Greenwood Mills, Inc. (S.C.App. 2005) 366 S.C. 379, 622 S.E.2d 546, rehearing denied, certiorari denied. Workers’ Compensation 1530.3(2)

**SECTION 42‑11‑100.** Amount of compensation payable for disability; exceptions.

Compensation payable for disability from an occupational disease must be the same as that provided for an injury under this title. No compensation is payable:

(1) for the degree of disability resulting from noncompensable causes or the employee’s refusal to use a safety appliance provided by and regularly required to be used by the employer or to obey a safety rule or regulation adopted and regularly enforced by the employer;

(2) for any disability resulting from the employee’s intoxication or wilful intent to injure himself;

(3) for the time the employee refuses to accept suitable employment when ordered to do so by the commission;

(4) after the disability terminates.

HISTORY: 1962 Code Section 72‑259; 1952 Code Section 72‑259; 1949 (46) 565; 1977 Act No. 103 Section 2; 1988 Act No. 677, Section 1, eff June 27, 1988.

Library References

Workers’ Compensation 797 to 799, 900.3.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 517, 520, 539 to 542.

**SECTION 42‑11‑110.** No presumptions; misconception of remedy.

There shall be no presumption that disablement from any cause or infirmity is the result of a occupational disease, nor that an occupational disease will result in disablement or disability. But when disability results from a disease which is compensable under other provisions of this title, although not an occupational disease, the employee shall not be deprived of any benefits to which he may be entitled because he may have misconceived his remedy to be for an occupational disease.

HISTORY: 1962 Code Section 72‑260; 1952 Code Section 72‑260; 1949 (46) 565.

Library References

Workers’ Compensation 1364.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1038, 1054 to 1055.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 305:10, Work Connection.

NOTES OF DECISIONS

In general 1

1. In general

A claimant is not required to elect, under Section 42‑11‑110, between his accidental injury claim and his occupational disease claim. Marquard v. Pacific Columbia Mills (S.C. 1982) 278 S.C. 323, 295 S.E.2d 870.

**SECTION 42‑11‑120.** Procedure for determining claims; reference of medical question to medical board.

The procedure for determining claims for benefits from an occupational disease shall be the same as that followed in determining other claims under this title, save that if any medical question shall be in controversy the commission may, upon its own motion, and shall, upon motion of either party to the proceeding, refer the question to the medical board as provided in this chapter for investigation and report. A medical question shall be deemed to include any issue concerning the existence, cause and duration of a disease or disability, the date of disablement, the degree of disability and the proportion thereof attributable to a noncompensable cause and any other matter necessarily pertinent thereto requiring the opinion of experts.

HISTORY: 1962 Code Section 72‑261; 1952 Code Section 72‑261; 1949 (46) 565.

Library References

Workers’ Compensation 547, 1730.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 356 to 357, 361 to 362, 365, 1226 to 1229.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 304:8, Official Investigations.

Attorney General’s Opinions

The powers granted the Medical Board under Section 72‑261 [1976 Code Section 42‑11‑120] are constitutional delegations of fact‑finding responsibilities of the Industrial Commission. 1976‑77 Op.Atty.Gen., No. 77‑35, p 37, 1977 WL 24378.

NOTES OF DECISIONS

In general 1

1. In general

The Workman’s Compensation Commission properly refused to submit a claimant’s case to a medical board, pursuant to Section 42‑11‑20, since the award was properly based on an accidental injury claim and not an occupational disease claim. Marquard v. Pacific Columbia Mills (S.C. 1982) 278 S.C. 323, 295 S.E.2d 870.

**SECTION 42‑11‑130.** Membership of medical board.

The medical board employed to determine controverted medical questions shall consist of three members appointed by the commission or hearing commissioner and selected from the medical advisory panel as follows: one to be named by the claimant and one to be named by the employer or his insurer as the case may be, and the third to be chosen by the commission or hearing commissioner. But if within ten days after the hearing in which a controverted medical question is raised one or more of the parties have failed to nominate a member, the commission or commissioner hearing the case shall nominate a member or members to complete the board to three members.

HISTORY: 1962 Code Section 72‑262; 1952 Code Section 72‑262; 1949 (46) 565; 1977 Act No. 103 Section 3.

Library References

Workers’ Compensation 1730.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1226 to 1229.

**SECTION 42‑11‑140.** Fees and expenses of medical board.

The fees and expenses of the medical board shall be charged in accordance with a schedule adopted by the commission upon the advice and recommendations of the medical advisory panel and such fees and expenses, along with such clinical and X‑ray expenses as the medical board may require in order to properly complete its investigation in a particular case, shall be chargeable as cost to the losing party in the controversy, save that when the claimant is the losing party such fees, costs and expenses shall be borne by the commission.

HISTORY: 1962 Code Section 72‑263; 1952 Code Section 72‑263; 1949 (46) 565.

Library References

Workers’ Compensation 1730.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1226 to 1229.

**SECTION 42‑11‑150.** Procedure before medical board.

The medical board, upon referral to it of a medical question, shall notify the claimant and the employer or its insurer, as the case may be, to appear before the board at a time and place stated in the notice and shall examine the employee, if living, and may examine the body of the employee, if deceased. The medical board shall consider any testimony given before the commission pertaining to the medical question and necessary to a proper determination thereof. The medical board shall, as soon as practical after it has completed its consideration of the case, report in writing its findings and conclusions on every medical question in controversy. Such report shall be a part of the record in the case and shall include a statement indicating the physician or physicians, if any, who appeared before it, the medical board, what, if any, medical reports and X‑rays were considered by it and any other matters which it deems necessary to explain or substantiate its conclusions. The commission upon receipt of the report shall send a copy thereof to the claimant and to the employer and his insurance carrier, if any.

HISTORY: 1962 Code Section 72‑264; 1952 Code Section 72‑264; 1949 (46) 565.

Library References

Workers’ Compensation 1096.10, 1305, 1312, 1730.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 993, 995 to 996, 998 to 999, 1001, 1226 to 1229.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 304:8, Official Investigations.

**SECTION 42‑11‑160.** Decisions on questions by medical board.

The decisions and award in the case shall conform to the findings and conclusions in such report insofar as it is restricted to medical questions, except that either party may, within ten days after receipt of a copy of the report, file written objection thereto with the commission; provided, the report shall not be binding on the commission if it be proven that the conclusion of the board upon a medical question be erroneous, due to fraud, undue influence, or mistake of law or material fact.

HISTORY: 1962 Code Section 72‑265; 1952 Code Section 72‑265; 1949 (46) 565; 1977 Act No. 103 Section 4.

Library References

Workers’ Compensation 1096.10, 1305, 1730.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 993, 995 to 996, 998 to 999, 1001, 1226 to 1229.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 304:8, Official Investigations.

NOTES OF DECISIONS

In general 1

1. In general

Commission not bound by report where it made no finding as to extent which noncompensable disease may have affected disability of employee. Brittle v. Raybestos‑Manhattan, Inc. (S.C. 1962) 241 S.C. 255, 127 S.E.2d 884.

**SECTION 42‑11‑170.** Membership of medical advisory panel.

The medical board shall be chosen from the medical advisory panel, composed of medical experts appointed by the Governor who shall be chosen from a list submitted by the executive committee of the South Carolina Medical Association, which list shall be approved by the Workers’ Compensation Commission. The medical advisory panel shall include at least three doctors of medicine with no less than five years’ specialization in the field of X‑ray diagnosis and treatment, at least three doctors of medicine with no less than five years’ specialization in pathology, at least three doctors of medicine with no less than five years’ experience in the treatment and diagnosis of occupational diseases or who are specially qualified by training and experience as experts in the diagnosis and treatment of diseases in general and two doctors who are qualified for the treatment of pulmonary diseases. Members of the medical advisory panel shall serve for a term of two years and the Governor may from time to time fill vacancies in the membership thereof from its lists submitted to him as provided in this section.

HISTORY: 1962 Code Section 72‑266; 1952 Code Section 72‑266; 1949 (46) 565; 1977 Act No. 103 Section 5.

Library References

Workers’ Compensation 1096.10, 1305, 1730.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 993, 995 to 996, 998 to 999, 1001, 1226 to 1229.

**SECTION 42‑11‑180.** Compensation of members of medical advisory panel.

Members of the medical advisory panel shall receive no compensation save that provided when they serve on a medical board. But when the panel is convened to give its advice and recommendations to the commission, the members participating therein shall receive per diem allowances plus their reasonable maintenance and travel expenses to be paid by the commission.

HISTORY: 1962 Code Section 72‑267; 1952 Code Section 72‑267; 1949 (46) 565; 1951 (47) 506.

Library References

Workers’ Compensation 1096.10.

Westlaw Topic No. 413.

**SECTION 42‑11‑185.** Medical examination in lieu of medical panel for occupationally related disease claims.

Notwithstanding the provisions of Section 42‑11‑120, in lieu of a medical panel in claims involving occupationally related diseases, at the election of either party or the hearing commissioner, the claimant shall be referred to a medical doctor or doctors who diagnose or treat occupational diseases and who are employed by or associated with one of the medical universities in South Carolina. The findings and testimony of such doctors shall be deemed advisory to, but not binding upon the hearing commissioner. Fees and expenses of such medical examinations shall be paid by the commission unless the claimant prevails in the controversy in which case such fees and expenses will be charged to the losing party.

HISTORY: 1978 Act No. 522 Section 3; 1978 Act No. 644 Part II Section 10.

Library References

Workers’ Compensation 1305.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 993, 995 to 996, 998 to 999, 1001.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 304:3, Neutral Examinations.

NOTES OF DECISIONS

In general 1

1. In general

The findings of a physician who examines a workers’ compensation claimant pursuant to a Commission order for such an examination under Section 42‑11‑185 are merely advisory. Hanks v. Blair Mills, Inc. (S.C.App. 1985) 286 S.C. 378, 335 S.E.2d 91.

**SECTION 42‑11‑190.** Promulgation of rules, regulations, and schedules.

The commission may, upon the advice and recommendations of the medical advisory panel:

(1) Make reasonable regulations regarding the conduct of hearings and investigations by medical boards and the fees and expenses to be allowed members of the panel for serving on such boards from time to time.

(2) Adopt a schedule of occupational diseases which shall include also a schedule of the processes or occupations giving rise to such diseases under the definitions given in Section 42‑11‑10.

HISTORY: 1962 Code Section 72‑268; 1952 Code Section 72‑268; 1949 (46) 565; 1988 Act No. 677, Section 2, eff June 27, 1988.

Library References

Workers’ Compensation 1091.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 825, 828 to 829.

**SECTION 42‑11‑200.** Rejection of chapter.

Either employer or employee may reject the provisions of this chapter under the same terms and conditions as he may reject the other provisions of this title.

HISTORY: 1962 Code Section 72‑269; 1952 Code Section 72‑269; 1949 (46) 565.

Library References

Workers’ Compensation 392.

Westlaw Topic No. 413.

RESEARCH REFERENCES

Treatises and Practice Aids

15 Causes of Action 61, Cause of Action to Recover Workers’ Compensation Benefits for Occupational Disease.

Modern Workers’ Compensation Section 321:14, Occupational Disease.