CHAPTER 15

Notice of Accident; Filing of Claims; Medical Attention and Examination

**SECTION 42‑15‑10.** State law under which claim is authorized to be filed.

 Any employee covered by the provisions of this title is authorized to file his claim under the laws of the state where he is hired, the state where he is injured, or the state where his employment is located. If an employee shall receive compensation or damages under the laws of any other state, nothing contained in this section shall be construed to permit a total compensation for the same injury greater than that provided in this title.

HISTORY: 1962 Code Section 72‑121.1; 1974 (58) 2265; 1976 Act No. 532 Section 2.

CROSS REFERENCES

Prohibition against retaliation based upon employee’s participation in proceedings under this title, see Section 41‑1‑80.

Library References

Workers’ Compensation 74 to 92.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 82 to 116.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 104:18, Interaction of Local and Out‑Of‑State Remedies.

LAW REVIEW AND JOURNAL COMMENTARIES

Products Liability ‑ An Analysis of the Law Concerning Design and Warning Defects in Workplace Products. 33 S.C. L. Rev. 273 (December 1981).

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1. In general

There are four prerequisites to the South Carolina Industrial Commission having jurisdiction: (1) The contract of employment must be made in this State; (2) the employer’s place of business must be in this State; (3) the residence of the employee must be in this State; and (4) the contract of employment must be for services to be performed not exclusively outside of this State. Younginer v J. A. Jones Const. Co. (1949) 215 SC 135, 54 SE2d 545. Horton v Baruch (1950) 217 SC 48, 59 SE2d 545. Arant v First Southern Co. (1967) 249 SC 305, 153 SE2d 919.

The employer‑employee relationship is the jurisdictional foundation upon which workers’ compensation is awarded, and the existence of a contract, not the commencement of work, establishes the employer‑employee relationship; accordingly, the situs of the contract determines where an employee was hired for purposes of determining jurisdiction under the Workers’ Compensation Act. Hill v. Eagle Motor Lines (S.C. 2007) 373 S.C. 422, 645 S.E.2d 424, rehearing denied. Workers’ Compensation 81; Workers’ Compensation 233; Workers’ Compensation 244

Workers’ Compensation Commission had jurisdiction over claim seeking medical and compensation benefits because claimant, a truck driver, was hired in South Carolina and his employment was located in South Carolina; employer hired claimant, a South Carolina resident, during a telephone conversation in which employer notified claimant that there was a job opening for him and arranged for him to travel to Alabama and commence work, claimant received his work assignment from dispatch at his South Carolina home, he started his road trips from his home, he used drop yards in South Carolina, he kept his truck at his home on the weekends, and he received his paycheck at his home in South Carolina. Hill v. Eagle Motor Lines (S.C. 2007) 373 S.C. 422, 645 S.E.2d 424, rehearing denied. Workers’ Compensation 81

Workers’ compensation claimant’s place of employment was in South Carolina, and therefore Workers’ Compensation Commission had jurisdiction over his claim for injury sustained in another state, though claimant, as salesperson for distributor, received his daily work assignments from distributor wherever distributor was located that day, and salesperson never started his road trips from South Carolina; claimant’s work as salesperson resulted in him not having connection with any state, location of claimant’s employment had to be in some state, and distributor and manufacturer both operated out of South Carolina and exerted control over salesperson. Voss v. Ramco, Inc. (S.C.App. 1997) 325 S.C. 560, 482 S.E.2d 582, rehearing denied, certiorari granted. Workers’ Compensation 1086

Workers’ Compensation Commission has jurisdiction over employee’s claim only if employee was hired in South Carolina, injured in South Carolina or if his or her employment is located in South Carolina. Voss v. Ramco, Inc. (S.C.App. 1997) 325 S.C. 560, 482 S.E.2d 582, rehearing denied, certiorari granted. Workers’ Compensation 1086

A long distance truck driver’s employment was not “located” in South Carolina for purposes of Section 42‑15‑10, even though he resided therein, where Georgia was the state in which he reported to his employer for duty, he picked up and returned his company truck, he received his work assignments, he called in during the course of his work, and he returned on completion of his work. Holman v. Bulldog Trucking Co. (S.C.App. 1993) 311 S.C. 341, 428 S.E.2d 889. Workers’ Compensation 90.1

In deciding where a transient worker’s employment is located for purposes of Section 42‑15‑10, the legislature intended the “base of operation” rule to apply, under which a worker’s employment is located at the employer’s place of business to which he reports, from which he receives his work assignments, and from which he starts his road trips, regardless of where his work is actually performed. Holman v. Bulldog Trucking Co. (S.C.App. 1993) 311 S.C. 341, 428 S.E.2d 889. Workers’ Compensation 74

A truck driver was not hired in South Carolina for purposes of Section 42‑15‑10, even though a salesman for the company told the driver (who was phoning from South Carolina) that there would be a job waiting for him if he went to the company’s headquarters in Indiana, where there was no evidence that the salesman had the authority to hire truck drivers. Moore v. North American Van Lines (S.C. 1992) 310 S.C. 236, 423 S.E.2d 116. Workers’ Compensation 81

Even if a claimant and his construction crew were hired in South Carolina when the claimant was telephoned in South Carolina from another state with an offer to hire the claimant and 5 of his crew members to work in another state, the employer did not regularly employ 4 or more employees in South Carolina so as to come within the Workers’ Compensation Act where the employer maintained no offices in South Carolina, was not licensed to do business in South Carolina and had never performed construction work in South Carolina. Deanhardt v. Neal C. Deanhardt Masonry Contractors (S.C.App. 1989) 298 S.C. 244, 379 S.E.2d 726.

An employee was hired in South Carolina where his employer telephoned him from Georgia offering him employment and he accepted the offer in South Carolina, and his employer was therefore subject to the South Carolina Worker’s Compensation Act in the determination of death benefits following his fatal injury in the course of that employment. O’Briant v. Daniel Const. Co. (S.C. 1983) 279 S.C. 254, 305 S.E.2d 241.

Place of contracting is the place where the minds of the parties met, or the place where the final act occurred which made a binding contract. Arant v. First Southern Co. (S.C. 1967) 249 S.C. 305, 153 S.E.2d 919. Workers’ Compensation 81; Workers’ Compensation 88; Workers’ Compensation 1181

Contract of employment made out of State. See Arant v. First Southern Co. (S.C. 1967) 249 S.C. 305, 153 S.E.2d 919.

Employee held a resident of South Carolina for the purpose of this section [Code 1962 Section 72‑169]. Horton v. Baruch (S.C. 1950) 217 S.C. 48, 59 S.E.2d 545.

Evidence showed that contract of employment with deceased was made in this State. Watson v. Wannamaker & Wells (S.C. 1948) 212 S.C. 506, 48 S.E.2d 447.

Where an accident occurred in another state and the injured employee was not a resident of this State, the Commission lacked jurisdiction to make an award. Tedars v. Savannah River Veneer Co. (S.C. 1943) 202 S.C. 363, 25 S.E.2d 235, 147 A.L.R. 914.

The last “and” in the first paragraph in this section [Code 1962 Section 72‑169] should not be read and interpreted “or” so that the condition of the employee’s domestic residence should be alternative rather than conjunctive with the other conditions of compensability of an accident occurring without the State. Tedars v. Savannah River Veneer Co. (S.C. 1943) 202 S.C. 363, 25 S.E.2d 235, 147 A.L.R. 914.

2. Validity of prior law

The provision of this section [Code 1962 Section 72‑169] that requires residence of the employee within the State in the case of accident without the State, does not violate the “privileges and immunities,” “equal protection of the law” and “due process” clauses of the State or Federal Constitutions. Tedars v. Savannah River Veneer Co. (S.C. 1943) 202 S.C. 363, 25 S.E.2d 235, 147 A.L.R. 914.

3. Construction with other laws

Section 42‑15‑10 does not override clear and unambiguous provisions of Section 42‑1‑360(2), as Section 42‑15‑10 conditions right of employee to file claim under Workers’ Compensation Act of this state on employee being covered in first instance by state’s Workers’ Compensation Act. Nolan v. National Sales Co., Inc. (S.C.App. 1987) 292 S.C. 1, 354 S.E.2d 575, affirmed 294 S.C. 371, 364 S.E.2d 752.

4. Base of operation

Workers’ compensation claimant’s employment was located in South Carolina, not North Carolina, and thus South Carolina Workers’ Compensation Commission had jurisdiction to hear claim for benefits, although claimant was injured in North Carolina during construction project and had been hired in North Carolina for that construction project; claimant’s regular and recurring employment with employer for several years prior to injury was nearly entirely based in South Carolina, claimant went to employer’s South Carolina office at least once during project to be paid, and claimant was taken back to employer’s office in South Carolina immediately following claimant’s injury. Oxendine v. Davis (S.C. 2007) 373 S.C. 438, 646 S.E.2d 143. Workers’ Compensation 76

Under “base‑of‑operations rule,” which is used for jurisdictional purposes to determine whether workers’ compensation claimant can file claim under Workers’ Compensation Act, claimant’s employment is located at employer’s place of business to which he reports, from which he receives his work assignments, and from which he starts his road trips, regardless of where work is performed. Oxendine v. Davis (S.C. 2007) 373 S.C. 438, 646 S.E.2d 143. Workers’ Compensation 74

In order to determine where a workers’ compensation claimant’s employment is located, for purposes of determining jurisdiction, South Carolina has adopted the “base of operations” rule; under this rule, the worker’s employment is located at the employer’s place of business to which he reports, from which he receives his work assignments, and from which he starts his road trips, regardless of where the work is performed. Hill v. Eagle Motor Lines (S.C. 2007) 373 S.C. 422, 645 S.E.2d 424, rehearing denied. Workers’ Compensation 74

5. Estoppel

Where a claimant was injured while employed outside the State and first submitted his case to the Georgia Commission, and accepted the benefits of its findings, he was not estopped from seeking additional benefits through the South Carolina Commission. Price v. Horton Motor Lines (S.C. 1942) 201 S.C. 484, 23 S.E.2d 744.

6. Review

Because issues of whether claimant was statutory employee under Workers’ Compensation Act and whether claimant was entitled to file workers’ compensation claim in state were jurisdictional, Court of Appeals had power and duty to review record and decide issues in accordance with preponderance of evidence. Voss v. Ramco, Inc. (S.C.App. 1997) 325 S.C. 560, 482 S.E.2d 582, rehearing denied, certiorari granted. Workers’ Compensation 1939.4(1)

The court of appeals would not create, for purposes of Section 42‑15‑10, a statutory presumption that if an employee resided in South Carolina and there was no ready means to prove his hiring place, he was hired in this state, since it is not the province of the courts to perform legislative functions. Holman v. Bulldog Trucking Co. (S.C.App. 1993) 311 S.C. 341, 428 S.E.2d 889. Workers’ Compensation 1340

**SECTION 42‑15‑20.** Notice to employer of accident or repetitive trauma.

 (A) Every injured employee or his representative immediately shall on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a notice of the accident and the employee shall not be entitled to physician’s fees nor to any compensation which may have accrued under the terms of this title prior to the giving of such notice, unless it can be shown that the employer, his agent, or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person.

 (B) Except as provided in subsection (C), no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby.

 (C) In the case of repetitive trauma, notice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby.

HISTORY: 1962 Code Section 72‑301; 1952 Code Section 72‑301; 1942 Code Section 7035‑25; 1936 (39) 1231; 1974 (58) 2265; 2007 Act No. 111, Pt I, Section 25, eff July 1, 2007, applicable to injuries that occur on or after that date.

CROSS REFERENCES

Employer’s answer to a request for hearing, time for filing and service, see S.C. Code of Regulations R. 67‑603.

Library References

Workers’ Compensation 1234 to 1253.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 963 to 969, 972.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 301:2, Notice of Injury or Disease.

Modern Workers’ Compensation Section 303:1, Employee Notice of Injury.

Modern Workers’ Compensation Section 321:6, “Notice of Injury” Requirements.

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1. In general

The provision of this section [Code 1962 Section 72‑301] for notice should be liberally construed in favor of claimants, but there are limitations upon that rule and the statutory requirement cannot be disregarded altogether. Mintz v Fiske‑Carter Const. Co. (1951) 218 SC 409, 63 SE2d 50. Teigue v Appleton Co. (1952) 221 SC 52, 68 SE2d 878.

But the required notice is not to be treated as a mere formality or technicality and dispensed with as a matter of course. Mintz v Fiske‑Carter Const. Co. (1951) 218 SC 409, 63 SE2d 50. Harpe v Kline Iron & Metal Works (1951) 219 SC 527, 66 SE2d 30. Teigue v Appleton Co. (1952) 221 SC 52, 68 SE2d 878.

The notice requirement of the Workers’ Compensation Act protects the employer by enabling him to investigate the facts and question witnesses while their memories are unfaded, and to furnish medical care to the employee in order to minimize the disability and consequent liability upon the employer. Hartzell v. Palmetto Collision, LLC (S.C.App. 2013) 406 S.C. 233, 750 S.E.2d 97, rehearing denied, certiorari granted, reversed 415 S.C. 617, 785 S.E.2d 194, on remand 419 S.C. 87, 796 S.E.2d 145. Workers’ Compensation 1216

Department of Mental Health nurse failed to provide timely and proper notice of her injury to her state employer, although she notified a health counselor for the Department; nurse did not notify her supervisor, and counselor did not did not serve in any supervisory capacity over nurse but rather usually worked at another mental health facility and was working with nurse on a temporary or “fill‑in” basis on the day of the incident. Lizee v. South Carolina Dept. of Mental Health (S.C.App. 2005) 367 S.C. 122, 623 S.E.2d 860, rehearing denied, certiorari denied. Workers’ Compensation 1248

Employer was given notice within 90 days of claimant’s injury, as required by statute, and thus claimant was entitled to workers’ compensation benefits for her injury, where claimant’s doctor sent a fax to company nurse describing the injury and requesting modification of work duties to avoid further injury, and employer had the opportunity to investigate and question witnesses while their memories were fresh and to furnish medical care to the claimant. Etheredge v. Monsanto Co. (S.C.App. 2002) 349 S.C. 451, 562 S.E.2d 679, rehearing denied. Workers’ Compensation 1221

Employee’s claim to recover benefits for total disability caused by pulmonary asbestosis was timely filed even though employee was definitely diagnosed and informed more than 2 years prior to filing that he was suffering from pulmonary asbestosis, where degree of functional impairment resulting from disease was not determined for nearly 4 years, during which time employee continued to work, and claim was filed on day following determination that he was totally disabled. Bailey v. Covil Corp. (S.C. 1987) 291 S.C. 417, 354 S.E.2d 35. Workers’ Compensation 551

Section 42‑15‑20 provides no specific method of giving notice, the object being that the employer be actually put on notice of the injury so he can investigate it immediately after its occurrence and can furnish medical care for the employee in order to minimize the disability and his own liability. Hanks v. Blair Mills, Inc. (S.C.App. 1985) 286 S.C. 378, 335 S.E.2d 91.

For case where no written notice was given but oral notice of the accident was held sufficient, see Mize v. Sangamo Elec. Co. (S.C. 1968) 251 S.C. 250, 161 S.E.2d 846.

If necessary to sustain an award of the Commission, this section [Code 1962 Section 72‑301] will be liberally construed. Buggs v. U.S. Rubber Co., Winnsboro Mills (S.C. 1942) 201 S.C. 281, 22 S.E.2d 881.

2. Purpose

The purpose of this section [Code 1962 Section 72‑301] is at least twofold: First, it affords protection of the employer in order that he may investigate the facts and question witnesses while their memories are unfaded; and second, it affords the employer opportunity to furnish medical care of the employee in order to minimize the disability and consequent liability upon the employer. Mintz v Fiske‑Carter Const. Co. (1951) 218 SC 409, 63 SE2d 50. Teigue v Appleton Co. (1952) 221 SC 52, 68 SE2d 878.

The purpose of statutory requirement that workers’ compensation claimant give employer notice of a job‑related accident is twofold: (1) it affords protection of the employer in order that he may investigate the facts and question witnesses while their memories are unfaded; and (2) it affords the employer opportunity to furnish medical care to the employee in order to minimize the disability and consequent liability upon the employer. Bass v. Isochem (S.C.App. 2005) 365 S.C. 454, 617 S.E.2d 369, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 374 S.C. 346, 649 S.E.2d 485. Workers’ Compensation 1216

The purpose of this section [Code 1962 Section 72‑301] and Code 1962 Section 72‑302 is to enable the employer to investigate the claim and to give prompt medical attention if necessary. Ashe v. Rock Hill Hardware Co. (S.C. 1951) 219 S.C. 159, 64 S.E.2d 396. Workers’ Compensation 1216

3. Construction and application

The last sentence of this section [Code 1962 Section 72‑301] is plain and mandatory. Mintz v Fiske‑Carter Const. Co. (1951) 218 SC 409, 63 SE2d 50. Teigue v Appleton Co. (1952) 221 SC 52, 68 SE2d 878.

The notice provisions of the Workers’ Compensation Act should be liberally construed in favor of claimants. Hartzell v. Palmetto Collision, LLC (S.C.App. 2013) 406 S.C. 233, 750 S.E.2d 97, rehearing denied, certiorari granted, reversed 415 S.C. 617, 785 S.E.2d 194, on remand 419 S.C. 87, 796 S.E.2d 145. Workers’ Compensation 52

Employer did in fact appeal Workers’ Compensation Commissioner’s finding that claimant gave timely notice of her occupational disease claim, and because employer appealed, Commissioner’s finding was not the law of the case; in its appeal to the Commission, employer alleged that Commissioner erred in finding that claim was timely reported, but Commission did not reach this claim because its decision rested solely on the statute of limitations issue, and when claimant appealed to the Circuit Court and when employer appealed to the Court of Appeals, employer continued to assert the notice issue. McCraw v. Mary Black Hosp. (S.C. 2002) 350 S.C. 229, 565 S.E.2d 286. Workers’ Compensation 1951

The statutory notice provisions for workers’ compensation coverage for work‑related injury should be liberally construed in favor of claimants. Etheredge v. Monsanto Co. (S.C.App. 2002) 349 S.C. 451, 562 S.E.2d 679, rehearing denied. Workers’ Compensation 52

Under a liberal construction of this section [Code 1962 Section 72‑301] and Code 1962 Section 72‑302, the Supreme Court has applied the language providing that no defect or inaccuracy in the notice shall be a bar to compensation unless the employer has proved that its interest was prejudiced thereby to cases where there was no written notice, but knowledge of the pertinent facts on the part of the employer, and held that the burden was upon the employer to prove prejudice. Mize v. Sangamo Elec. Co. (S.C. 1968) 251 S.C. 250, 161 S.E.2d 846.

4. Accident

In applying statutory notice of injury provision to a repetitive trauma injury, i.e., carpal tunnel syndrome, the Workers’ Compensation Commission shall determine the statutory notice requirement from the time of disablement of the claimant, and notice begins to run when the claimant becomes disabled and could discover with reasonable diligence that his condition is compensable. Bass v. Isochem (S.C.App. 2005) 365 S.C. 454, 617 S.E.2d 369, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 374 S.C. 346, 649 S.E.2d 485. Workers’ Compensation 1230

Workers’ compensation statute requiring that every injured employee or his representative give the employer notice of a job‑related accident within ninety days after its occurrence provides no specific method of giving notice, the object being that the employer be actually put on notice of the injury so he can investigate it immediately after its occurrence and can furnish medical care for the employee in order to minimize the disability and his own liability. Bass v. Isochem (S.C.App. 2005) 365 S.C. 454, 617 S.E.2d 369, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 374 S.C. 346, 649 S.E.2d 485. Workers’ Compensation 1216; Workers’ Compensation 1221

Generally, injury is not compensable under workers’ compensation law unless notice of job‑related accident is given to employer within ninety days after its occurrence. Bass v. Isochem (S.C.App. 2005) 365 S.C. 454, 617 S.E.2d 369, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 374 S.C. 346, 649 S.E.2d 485. Workers’ Compensation 1226

With an occupational disease, the “accident” occurs, for notice purposes, when the workers’ compensation claimant becomes disabled and could, through reasonable diligence, discover that his condition is compensable. 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 551

In the case of occupational diseases, the “accident” occurs when the employee becomes disabled and could, through reasonable diligence, discover that his condition is a compensable one. Hanks v. Blair Mills, Inc. (S.C.App. 1985) 286 S.C. 378, 335 S.E.2d 91. Workers’ Compensation 1230

Meaning of “accident”. In a case involving occupational disease the term “accident” in this section [Code 1962 Section 72‑301] means disablement from such disease, and in case of a pulmonary disease total disability, and limitation period does not commence to run until claimant, by reasonable diligence, could have discovered that her condition was compensable. Drake v. Raybestos‑Manhattan, Inc. (S.C. 1962) 241 S.C. 116, 127 S.E.2d 288.

5. Compensable injury

A mere work‑related ache does not constitute a compensable condition under Workers’ Compensation Act (WCA), so as to trigger 90‑day period for reporting a compensable condition to employer, regardless of whether the employee later develops an injury. King v. International Knife and Saw‑Florence (S.C.App. 2011) 395 S.C. 437, 718 S.E.2d 227, rehearing denied, certiorari denied. Workers’ Compensation 1240

A work‑related repetitive trauma injury does not become compensable under Workers’ Compensation Act (WCA), and the 90‑day clock for reporting compensable condition to employer does not start, until the injured employee discovers or should discover he qualifies to receive benefits for medical care, treatment, or disability due to his condition. King v. International Knife and Saw‑Florence (S.C.App. 2011) 395 S.C. 437, 718 S.E.2d 227, rehearing denied, certiorari denied. Workers’ Compensation 838; Workers’ Compensation 1239

For purposes of determining timeliness of notice to employer, workers’ compensation claimant’s repetitive trauma injury was not compensable at a time when he had missed no work because of the condition, had sought no treatment for it, and had not been diagnosed as having a repetitive trauma injury, even though claimant admitted that his arm was tired, sore, and achy for a couple of years before he became unable to work, and further admitted that he believed his arm ached because he worked “slinging a hammer all day.” King v. International Knife and Saw‑Florence (S.C.App. 2011) 395 S.C. 437, 718 S.E.2d 227, rehearing denied, certiorari denied. Workers’ Compensation 1230

6. Notice in fact

The employer’s knowledge of the fact that an employee becomes ill while at work does not necessarily, of itself, serve the employer with notice that such illness constituted or resulted in a compensable injury. Sanders v. Richardson (S.C. 1968) 251 S.C. 325, 162 S.E.2d 257.

When notice not required. Notice not required where employee unable to give it within statutory period because of nature of his disability, and employer had ample notice and knowledge of facts and surrounding circumstances within a reasonable time. Ricker v. Village Management Corp. (S.C. 1957) 231 S.C. 47, 97 S.E.2d 83.

An employer cannot claim prejudice because the notice of injury required by this section [Code 1962 Section 72‑301] was not given where he had full notice in fact. But the employer’s knowledge of the fact that an employee became ill while at work does not necessarily, of itself, charge the employer with notice that such illness constituted or resulted in a compensable injury. Teigue v. Appleton Co. (S.C. 1952) 221 S.C. 52, 68 S.E.2d 878. Workers’ Compensation 1239; Workers’ Compensation 1253

Foreman’s knowledge of an accident to an employee was sufficient notice to the employer and the requirements of this section [Code 1962 Section 72‑301] were met. Buggs v. U.S. Rubber Co., Winnsboro Mills (S.C. 1942) 201 S.C. 281, 22 S.E.2d 881.

7. “Reasonable excuse” and “prejudice”

Where Commission made no finding with respect to “reasonable excuse,” and only a conclusion as to “lack of prejudice” without specific findings upon the evidence, the Supreme Court would not consider merits but ordered case sent back to Commission for further findings. Gray v Laurens Mills (1957) 231 SC 488, 99 SE2d 36. Dawkins v Capitol Constr. Co. (1967) 250 SC 406, 158 SE2d 651, later app 252 SC 536, 167 SE2d 439.

An employer cannot claim prejudice where its knowledge of the pertinent facts was as full as would have been disclosed by the written notice had such been given. Mize v Sangamo Electric Co. (1968) 251 SC 250, 161 SE2d 846. Dawkins v Capitol Constr. Co. (1969) 252 SC 536, 167 SE2d 439.

Workers’ compensation claimant had a reasonable excuse for his failure to provide timely formal notice to employer of his neck and back injuries while working on a road crew pulling a 32‑foot long two‑by‑four “squeegee board” to level freshly poured concrete, as required for injuries to have been compensable, where claimant’s supervisors were both present at the time of claimant’s injury and were aware of his treatment, and lead member’s reason for not reporting the incident to the supervisor was that supervisor was “right there” during incident. Nero v. South Carolina Department of Transportation (S.C.App. 2017) 2017 WL 1161127. Workers’ Compensation 1216

Where there is a dispute as to whether the employee gave timely notice of his injury, the hearing commissioner must make a specific, express finding as to whether notice was timely or excused. Aristizabal v. I. J. Woodside‑Division of Dan River, Inc. (S.C. 1977) 268 S.C. 366, 234 S.E.2d 21.

With reference to the “reasonable excuse” and “prejudice” provision of this section [Code 1962 Section 72‑301], a direct and positive ruling by the Commission is necessary, it being made the fact‑finding body or agency as to such defense. Dawkins v. Capitol Const. Co. (S.C. 1967) 250 S.C. 406, 158 S.E.2d 651.

Employer was not prejudice by a delay in giving the required notice. See Walsh v. U. S. Rubber Co. (S.C. 1961) 238 S.C. 411, 120 S.E.2d 685.

Lack of prejudice does not justify compensation unless the requirement of reasonable excuse is also satisfied. Gray v. Laurens Mill (S.C. 1957) 231 S.C. 488, 99 S.E.2d 36.

Commission to make direct and positive ruling as to “reasonable excuse” and “prejudice.” ‑ With reference to the “reasonable excuse” and “prejudice” provisions, it is the duty of the commission to make a direct and positive ruling thereon; it should make such specific and definite findings upon the evidence reported as will enable the Supreme Court to determine whether the general finding or conclusion should stand, particularly when there are material facts at issue. Gray v. Laurens Mill (S.C. 1957) 231 S.C. 488, 99 S.E.2d 36.

The defense of reasonable excuse for failure to give notice and lack of prejudice to the employer is jurisdictional, and a direct and positive ruling by the Commission thereabout is necessary, it being made the fact‑finding body or agency as to such defense. Harpe v. Kline Iron & Metal Works (S.C. 1951) 219 S.C. 527, 66 S.E.2d 30. Workers’ Compensation 1226; Workers’ Compensation 1758

8. Limitation of actions

Cause of action for workers’ compensation benefits for a repetitive injury accrued, and the 90‑day limitations period began to run, from the date workers’ compensation claimant received note from her physician that indicated her symptoms were related to the repetitious over‑the‑head work she performed for employer. Murphy v. Owens Corning (S.C.App. 2011) 393 S.C. 77, 710 S.E.2d 454. Workers’ Compensation 1199.11

The last day of exposure is the date from which the statute of limitations begins to run in a repetitive trauma case, rather than on date the injury was discovered, although a workers’ compensation claimant is still required to separately give the employer notice of an injury; repetitive trauma injuries, unlike an injury which occurred on a specific date, have a gradual onset caused by the cumulative effect of repetitive traumatic events or “mini‑accidents.” Schulknight v. City of North Charleston (S.C. 2002) 352 S.C. 175, 574 S.E.2d 194, rehearing denied. Workers’ Compensation 1199.11; Workers’ Compensation 1217

9. Presumptions and burden of proof

The claimant bears the burden of proving compliance with the notice requirements of the Workers’ Compensation Act. Hartzell v. Palmetto Collision, LLC (S.C.App. 2013) 406 S.C. 233, 750 S.E.2d 97, rehearing denied, certiorari granted, reversed 415 S.C. 617, 785 S.E.2d 194, on remand 419 S.C. 87, 796 S.E.2d 145. Workers’ Compensation 1381

It is not the workers’ compensation claimant’s burden to show the absence of prejudice by lack of timely notice to the employer of a claim, but it is the employer’s burden to prove the presence of prejudice. Lizee v. South Carolina Dept. of Mental Health (S.C.App. 2005) 367 S.C. 122, 623 S.E.2d 860, rehearing denied, certiorari denied. Workers’ Compensation 1381

The workers’ compensation claimant bears the burden of proving compliance with notice requirements. Lizee v. South Carolina Dept. of Mental Health (S.C.App. 2005) 367 S.C. 122, 623 S.E.2d 860, rehearing denied, certiorari denied. Workers’ Compensation 1381

The burden is upon the employer to prove prejudice. Dawkins v. Capitol Const. Co. (S.C. 1969) 252 S.C. 536, 167 S.E.2d 439.

10. Sufficiency of evidence

Substantial evidence supported finding of Workers’ Compensation Commission that claimant reported his work‑related injury to employer within 90 days after the occurrence of the accident, as required under statutory notice provision for workers’ compensation coverage, where claimant testified that he told employer on the day after his injury that he was “pretty sore” and “must have hurt [himself],” and Commission, after having heard testimony from both parties, found claimant more credible than employer on the issue of notice. Hartzell v. Palmetto Collision, LLC (S.C. 2016) 415 S.C. 617, 785 S.E.2d 194, on remand 419 S.C. 87, 796 S.E.2d 145, rehearing denied. Workers’ Compensation 1676

Evidence was insufficient to support the Workers’ Compensation Commission Appellate Panel’s determination that claimant provided employer with adequate notice that he had suffered a work‑related back injury; claimant provided no evidence that he notified employer of any facts connecting his back injury with his employment, but rather, testified that he told employer he must have hurt himself, but did not indicate whether in that conversation he in any way connected his injury with his work. Hartzell v. Palmetto Collision, LLC (S.C.App. 2013) 406 S.C. 233, 750 S.E.2d 97, rehearing denied, certiorari granted, reversed 415 S.C. 617, 785 S.E.2d 194, on remand 419 S.C. 87, 796 S.E.2d 145. Workers’ Compensation 1676

Evidence supported finding that workers’ compensation claimant failed to provide employer timely notice of his heart condition, as was necessary to preserve claim for workers’ compensation benefits for alleged workplace injury; although claimant’s wife testified that she notified claimant’s supervisor of claimant’s surgery, the supervisor denied ever having such a conversation. Watt v. Piedmont Automotive (S.C.App. 2009) 384 S.C. 203, 681 S.E.2d 615. Workers’ Compensation 1676

Finding that workers’ compensation claimant gave timely notice of his occupational disease was supported by evidence that, within one month of being diagnosed as having hepatitis C, claimant told several of his superiors about his diagnosis and told them he believed that he had contracted the disease at work. 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 1682

Where the employer was aware of the employee’s medical and employment history, there was substantial evidence to support a conclusion that the employer was notified of the injury within the requirements of Section 42‑15‑20 as early as October 24, 1978, when the employer received a letter from a physician stating that the employee had chronic lung disease, and such notice was timely where the employee became disabled from byssinosis on June 28, 1979. Hanks v. Blair Mills, Inc. (S.C.App. 1985) 286 S.C. 378, 335 S.E.2d 91.

A claimant’s contradicted testimony that he had told his supervisor about hurting his back after returning home from a road trip was not sufficient to carry his burden of proof of notice of his injury as required by Section 42‑15‑20 since there was circumstantial evidence in the record and the testimony of the company’s employees that contradicted the claimant’s argument of notice. Lowe v. Am‑Can Transport Services, Inc. (S.C.App. 1984) 283 S.C. 534, 324 S.E.2d 87.

11. Review

Trial court’s order reversing Worker’s Compensation Commission decision that held claimant failed to report her alleged on‑the‑job injury within 90 days, and that required the Commission to conduct additional proceedings to determine whether the injury occurred during the course and scope of employment, set the claimant’s average weekly wage and compensation rate, and answer other questions that might arise, was not a final judgment, and thus, not immediately appealable. Long v. Sealed Air Corp. (S.C.App. 2011) 391 S.C. 483, 706 S.E.2d 34. Workers’ Compensation 1956

Remand was required for determination of whether workers’ compensation claimant had reasonable excuse for failure to timely notify employer of her injury and whether employer was prejudiced by the lack of notice, despite employer’s opposition. Lizee v. South Carolina Dept. of Mental Health (S.C.App. 2005) 367 S.C. 122, 623 S.E.2d 860, rehearing denied, certiorari denied. Workers’ Compensation 1950

**SECTION 42‑15‑40.** Time for filing claim; filing by registered mail.

 The right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident, or if death resulted from the accident, within two years of the date of death. However, for occupational disease claims the two‑year period does not begin to run until the employee concerned has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis. For the death or injury of a member of the South Carolina National Guard, as provided for in Section 42‑7‑67, the time for filing a claim is two years after the accident or one year after the federal claim is finalized, whichever is later. The filing required by this section may be made by registered mail, and the service within the time periods set forth in this section constitutes timely filing. For a “repetitive trauma injury” as defined in Section 42‑1‑172, the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure. This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment.

HISTORY: 1962 Code Section 72‑303; 1952 Code Section 72‑303; 1942 Code Section 7035‑27; 1936 (39) 1231; 1955 (49) 319; 1974 (58) 2265; 1978 Act No. 522 Section 6; 1979 Act No. 194 Part III Section 6; 1990 Act No. 612, Part II, Section 15C, eff June 13, 1990 (became law without the Governor’s signature); 2007 Act No. 111, Pt I, Section 26, eff July 1, 2007, applicable to injuries that occur on or after that date.

CROSS REFERENCES

Employer’s answer to a request for hearing, time for filing and service, see S.C. Code of Regulations R. 67‑603.

Use of certified mail for registered mail, see Section 2‑7‑90.

Library References

Workers’ Compensation 1199.1, 1260 to 1263.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 939 to 940, 975 to 976, 979, 986 to 992.

RESEARCH REFERENCES

ALR Library

86 ALR 5th 295 , When Limitations Period Begins to Run as to Claim for Disability Benefits for Contracting of Disease Under Workers’ Compensation or Occupational Diseases Act.

100 ALR 5th 567 , When Time Period Commences as to Claim Under Workers’ Compensation or Occupational Diseases Act for Death of Worker Due to Contraction of Disease.

Encyclopedias

S.C. Jur. Limitation of Actions Section 53, Workers’ Compensation.

Treatises and Practice Aids

Modern Workers’ Compensation Section 301:3, Injury Claims.

Modern Workers’ Compensation Section 301:4, Disease Claims.

Modern Workers’ Compensation Section 301:6, Death Claims.

Modern Workers’ Compensation Section 321:7, Claim Time Limitations.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Estoppel to Assert the Statute of Limitations. 31 S.C. L. Rev. 167.

Annual survey of South Carolina law: Workers’ compensation law. 43 S.C. L. Rev. 214 (Autumn 1991).

Attorney General’s Opinions

A court would likely find that the intent of the General Assembly is made clear in Proviso 58.3, and that the Workers’ Compensation Commission has the authority to charge a $25.00 filing fee for all hearings, settlements, and motions unless the individual is indigent. S.C. Op.Atty.Gen. (August 30, 2010) 2010 WL 3505048.

NOTES OF DECISIONS

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1. In general

This section [Code 1962 Section 72‑303] is a statute of limitation. Skipper v Marlowe Mfg. Co. (1963) 242 SC 486, 131 SE2d 524. Clements v Greenville County (1965) 246 SC 20, 142 SE2d 212. Mize v Sangamo Electric Co. (1965) 246 SC 307, 143 SE2d 590. Hucks v Green’s Fuel of South Carolina (1966) 247 SC 457, 148 SE2d 149.

Since workers’ compensation claimant filed his claim approximately a year after date his mental and physical injury culminated in disability, his claim was not barred by the two year statute of limitations. Smith v. NCCI, Inc. (S.C.App. 2006) 369 S.C. 236, 631 S.E.2d 268, rehearing denied. Workers’ Compensation 1199.9

Where an employer paid an employee compensation for a period of time after an accident, the 2‑year statute of limitations period under Section 42‑15‑40 began to run on the date the employer made its last compensation payment to the employee. Hopkins v. Floyd’s Wholesale (S.C.App. 1988) 295 S.C. 154, 367 S.E.2d 447, affirmed 299 S.C. 127, 382 S.E.2d 907.

Where an employee was diagnosed on June 28, 1979, as having “advanced chronic obstructive pulmonary disease,” but testified that he only later learned that the disease could be related to his occupation, and the claim for compensation was filed on December 3, 1980, well within two years of the time the employee was diagnosed as totally disabled in June, 1979, the claim was filed within the two‑year statute of limitations of Section 42‑15‑40. Hanks v. Blair Mills, Inc. (S.C.App. 1985) 286 S.C. 378, 335 S.E.2d 91.

The one‑year provision is not jurisdictional. Chapman v. Foremost Dairies, Inc. (S.C. 1967) 249 S.C. 438, 154 S.E.2d 845.

Lack of diligence on the part of the attorney for the claimant is attributable to and binding upon him. Hucks v. Green’s Fuel of S. C. (S.C. 1966) 247 S.C. 457, 148 S.E.2d 149. Attorney And Client 77

The filing of a report by the employer and carrier did not constitute the filing of a claim for compensation within one year of the accident as required by this section [Code 1962 Section 72‑303]. Hucks v. Green’s Fuel of S. C. (S.C. 1966) 247 S.C. 457, 148 S.E.2d 149. Workers’ Compensation 1199.23

It is the duty of the Commission to make a specific finding on compliance, when compliance with this section [Code 1962 Section 72‑303] is an issue between the parties. Mize v. Sangamo Elec. Co. (S.C. 1965) 246 S.C. 307, 143 S.E.2d 590.

Where evidence failed to show causal connection between accidental injury and earlier injury which was barred by this section [Code 1962 Section 72‑303], claim was barred by this section [Code 1962 Section 72‑303]. Dennis v. Williams Furniture Corp. (S.C. 1963) 243 S.C. 53, 132 S.E.2d 1.

This section [Code 1962 Section 72‑303] is one of limitation, and its requirement is not jurisdictional. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 285, 113 S.E.2d 794.

The filing with the Commission of a claim for compensation is an altogether different requirement from the requirement of notice in Code 1962 Sections 72‑301 and 72‑302, its object being to protect employers and their insurance carriers against long delayed demands. Ashe v. Rock Hill Hardware Co. (S.C. 1951) 219 S.C. 159, 64 S.E.2d 396. Workers’ Compensation 1257

This section [Code 1962 Section 72‑303] is more a limitation than a procedural requirement. King v. Wesner (S.C. 1941) 198 S.C. 49, 16 S.E.2d 289.

2. Construction and application

This section [Code 1962 Section 72‑303] should be given a liberal construction. Gold v Moragne (1943) 202 SC 281, 24 SE2d 491. Chapman v Foremost Dairies, Inc. (1967) 249 SC 438, 154 SE2d 845.

While it was unquestionably the purpose of the limitations written in this section [Code 1962 Section 72‑303] to protect employers and insurance carriers against long delayed demands, it is also evident that this section [Code 1962 Section 72‑303] should be given a liberal construction. Lowther v Standard Oil Co. (1945) 206 SC 286, 33 SE2d 889. Young v Sonoco Products Co. (1947) 210 SC 146, 41 SE2d 860.

Statute of limitations applicable to workers’ compensation claims, like the Workers’ Compensation Act as a whole, should be given liberal construction, and any reasonable doubts should be resolved in favor of coverage. Rogers v. Spartanburg Regional Medical Center (S.C.App. 1997) 328 S.C. 415, 491 S.E.2d 708, rehearing denied, certiorari granted. Workers’ Compensation 51

To construe this section [Code 1962 Section 72‑303] and Code 1962 Section 72‑253 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.

The language used in this section [Code 1962 Section 72‑303] is plain and unambiguous and the Supreme Court is not at liberty by judicial construction to add to or amend this section [Code 1962 Section 72‑303] so as to excuse an employee from complying with this mandatory requirement. Kirby v. Holliday Laundry & Dry Cleaners (S.C. 1957) 230 S.C. 412, 96 S.E.2d 61.

While it is true that this section [Code 1962 Section 72‑303] should be given a liberal construction, yet the court is not justified in so construing it as to do violence to a specific requirement of the Compensation Act. Such statutes apply with full force to the most meritorious claims. Ashe v. Rock Hill Hardware Co. (S.C. 1951) 219 S.C. 159, 64 S.E.2d 396. Workers’ Compensation 1199.1

3. Construction with other laws

The contention that this section [Code 1962 Section 72‑303] is jurisdictional in its requirement, a condition annexed to the right to compensation rather than a limitation, and therefore the failure of compliance with it may be raised at any time and in any state of the proceedings, is without support in the decisions. Hoke v. Cherokee County (S.C. 1950) 216 S.C. 376, 58 S.E.2d 330.

4. Purpose

The purpose of the one‑year limitation contained in this section [Code 1962 Section 72‑303] is to protect employers and their insurance carriers against long delayed demands. Chapman v. Foremost Dairies, Inc. (S.C. 1967) 249 S.C. 438, 154 S.E.2d 845. Workers’ Compensation 1199.1

5. Filing of claim

Claimant constructively charged with knowledge of time for filing claim. The fact that a claimant may have been unaware of the requirement as to filing a claim within one year furnishes no legal excuse for not filing the claim as he is constructively charged with such knowledge. Young v Sonoco Products Co. (1947) 210 SC 146, 41 SE2d 860. Ashe v Rock Hill Hardware. Co. (1951) 219 SC 159, 64 SE2d 396.

The 2‑year statute of limitation for filing a workers’ compensation claim, Section 42‑15‑40, is inapplicable to claims by employers against the Second Injury Fund because the statute of limitation (1) applies to claims for compensation not reimbursement, (2) governs claims addressed to the commission as opposed to those addressed to the fund, and (3) speaks to an employee’s injury, not the employer’s notice of inquiry. Greenwood Mills, Inc. v. Second Injury Fund (S.C. 1993) 315 S.C. 256, 433 S.E.2d 846.

The filing required by this section [Code 1962 Section 72‑303] is accomplished when the claim is delivered to and received by the proper officer to be kept on file, and mailing the claim will not constitute compliance with the statutory requirement. Fox v. Union‑Buffalo Mills (S.C. 1955) 226 S.C. 561, 86 S.E.2d 253.

The mere failure on the part of an employer to report the accident does not, in the absence of fraud, toll the running of the statute as to the time for filing a claim for compensation. Duncan v. Gaffney Mfg. Co. (S.C. 1949) 214 S.C. 502, 53 S.E.2d 396.

The failure of an employer to comply with Rule 7 of the Rules and Regulations of the South Carolina Industrial Commission, providing that every employer operating under the Workmen’s Compensation Act shall post notice at his place of business that he is operating under such Act, does not have the legal effect of excusing employee from filing claim for compensation within one year after the accident. Samuel v. Appleton Co. (S.C. 1949) 214 S.C. 157, 51 S.E.2d 508.

Reports made by the employer and insurance carrier to the Industrial Commission may not be substituted for filing of claim for compensation within one year of accident as required by this section [Code 1962 Section 72‑303]. Burnhart v. Dunean Mills (S.C. 1949) 214 S.C. 113, 51 S.E.2d 377. Workers’ Compensation 1199.20

It is not necessary that the claim state the nature or the amount of the compensation sought; neither need it state all of the deleterious effects arising out of the accident. Gold v. Moragne (S.C. 1943) 202 S.C. 281, 24 S.E.2d 491.

Claims for disability and disfigurement are not separate and distinct as disfigurement is merely an additional element of compensation and when the Commission has jurisdiction to pass on any element of compensation, all elements are included; and it was not contemplated by the Act that different parts of the total result of one accident should be regarded as separate claims. Gold v. Moragne (S.C. 1943) 202 S.C. 281, 24 S.E.2d 491.

6. Agreement for compensation

Once agreement for compensation form was timely filed and approved by Workers’ Compensation Commission, the claim was established, and the statute of limitations could no longer pose a bar. Hamilton v. Bob Bennett Ford (S.C.App. 1999) 336 S.C. 72, 518 S.E.2d 599, rehearing denied, certiorari granted in part, affirmed as modified 339 S.C. 68, 528 S.E.2d 667. Workers’ Compensation 1140

Agreement for compensation form, which is filed with and approved by Workers’ Compensation Commission, satisfies the statutory requirement that claim for compensation be filed within two years after accident. Hamilton v. Bob Bennett Ford (S.C.App. 1999) 336 S.C. 72, 518 S.E.2d 599, rehearing denied, certiorari granted in part, affirmed as modified 339 S.C. 68, 528 S.E.2d 667. Workers’ Compensation 1140

Payment of temporary total disability benefits to claimant did not constitute “filing” of workers’ compensation claim within meaning of statute setting forth limitations period for filing claim, where there existed no written agreement between claimant and employer providing for payment of benefits. Rogers v. Spartanburg Regional Medical Center (S.C.App. 1997) 328 S.C. 415, 491 S.E.2d 708, rehearing denied, certiorari granted. Workers’ Compensation 1260

An agreement to pay compensation, filed with and approved by the Commission, answers the statutory requirement that the claim for compensation be made within a specified time, and the same is true as regards an agreement filed with the board but not yet acted upon by it. Gold v. Moragne (S.C. 1943) 202 S.C. 281, 24 S.E.2d 491. Workers’ Compensation 1262

7. Reliance period

Assuming that workers’ compensation claimant relied on employer’s alleged assurances that her claim would be handled without a formal filing, limitations period for filing her claim was tolled only during period of her reliance, that is, until date of last payment of benefits to her. Rogers v. Spartanburg Regional Medical Center (S.C.App. 1997) 328 S.C. 415, 491 S.E.2d 708, rehearing denied, certiorari granted. Workers’ Compensation 1199.21(1)

The statute of limitations is tolled during the “reliance period,” which is the period during which an employee is induced by the employer to believe that his or her claim is compensable and will be taken care of without the employee filing a claim. The rule which tolls the statute of limitations during the reliance period, in contrast with the rule which requires an employee to file a workers’ compensation claim within a reasonable time following the reliance period, results in greater certainty as to the compensability of a given claim and provides employees with the benefit of the protection afforded by the equitable rule. Hopkins v. Floyd’s Wholesale (S.C. 1989) 299 S.C. 127, 382 S.E.2d 907.

8. Diagnosed definitively

Statute of limitations on workers’ compensation claimant’s case did not begin to run until claimant was diagnosed definitively as having occupational disease and was notified of diagnosis; it was not reasonable to conclude that claimant’s understanding that his condition was affected by workplace environment constituted notification of definitive diagnosis of occupational disease. Brown v. Greenwood Mills, Inc. (S.C.App. 2005) 366 S.C. 379, 622 S.E.2d 546, rehearing denied, certiorari denied. Workers’ Compensation 1199.10

Earliest possible date of definitive diagnosis of workers’ compensation claimant’s occupational asthma occurred when claimant was hospitalized, and since her claim for benefits was filed less than two years after her hospitalization, her claim for benefits was timely pursuant to statute providing for two year limitations period for occupational disease claims. McCraw v. Mary Black Hosp. (S.C. 2002) 350 S.C. 229, 565 S.E.2d 286. Workers’ Compensation 1199.10

Workers’ compensation claimant’s understanding that her asthma was affected by workplace chemicals did not constitute notification of definitive diagnosis of occupational asthma so as to trigger statutory two year limitations period for occupational disease claims. McCraw v. Mary Black Hosp. (S.C. 2002) 350 S.C. 229, 565 S.E.2d 286. Workers’ Compensation 1199.10

Workers’ compensation claimant’s consultations with doctor, a coworker, were informal, undocumented, and not in the context of a doctor‑patient relationship, and thus, doctor’s informal conversations with claimant in hospital’s endoscopy unit, where both claimant and doctor worked, did not constitute a definitive diagnosis of claimant’s occupational asthma so as to trigger statutory two year limitations period for occupational disease claims. McCraw v. Mary Black Hosp. (S.C. 2002) 350 S.C. 229, 565 S.E.2d 286. Workers’ Compensation 1199.10

Workers’ compensation claim for occupational asthma did not accrue until claimant’s doctor definitively diagnosed the disease and claimant was disabled as result, which occurred less than two years before claimant applied for benefits; that claimant had earlier confirmation that chemicals in the work environment should be avoided and were potentially related to her breathing difficulties, even if relayed to claimant by qualified physician, did not constitute definitive diagnosis of occupational disease as contemplated by statute of limitations. 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 1199.10

Claim for workers’ compensation benefits resulting from occupational disease, filed within two years of claimant’s being diagnosed with hepatitis C, was timely. 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 1199.10

Employee’s claim to recover benefits for total disability caused by pulmonary asbestosis was timely filed even though employee was definitely diagnosed and informed more than 2 years prior to filing that he was suffering from pulmonary asbestosis, where degree of functional impairment resulting from disease was not determined for nearly 4 years, during which time employee continued to work, and claim was filed on day following determination that he was totally disabled. Bailey v. Covil Corp. (S.C. 1987) 291 S.C. 417, 354 S.E.2d 35. Workers’ Compensation 551

A worker’s compensation claimant was entitled to a limitations period commencing on the date of the “Definite Diagnosis” of his occupational disease, specifically byssinosis, within the meaning of Section 42‑15‑40, as amended, where it was clear from the record that he had fully complied with both existing and amended statutes of limitations, and where the evidence showed convincingly that the claimant had exercised reasonable diligence in seeking medical treatment for his breathing problems, and did not learn until 18 years after the commencement of his occupational disease that his condition was in fact compensable under the Workman’s Compensation Act. Goff v. Mills (S.C. 1983) 279 S.C. 382, 308 S.E.2d 778.

9. Knowledge of condition

Worker suffered work‑related injury, and thus, two‑year limitations period governing worker’s claim for repetitive trauma back injury began to run, on date he began experiencing constant, throbbing pain that interfered with his ability to perform his job, was diagnosed with disc disruption and lumbar radiculitis, and was told by his doctor he could not work his job, not date when he began to feel intermittent back pain. Rhame v. Charleston County School Dist. (S.C.App. 2015) 415 S.C. 162, 781 S.E.2d 151, rehearing denied, certiorari dismissed. Workers’ Compensation 1199.11

An employee cannot be expected and certainly cannot be required to institute a workers’ compensation claim, for the purposes of the two‑limitations period, until he has reliable information that his condition is the result of his employment, and therefore, given that there must be competent and substantial evidence of this link, the claimant is entitled to rely on a physician’s diagnosis of his condition rather than his own impressions. Holmes v. National Service Industries, Inc. (S.C. 2011) 395 S.C. 305, 717 S.E.2d 751, rehearing denied. Workers’ Compensation 1199.15

Claimant knew or should have known, at time she was diagnosed with sarcoidosis, that sarcoidosis was related to her employment, for purposes of two‑year limitations period governing claim for workers’ compensation benefits; claimant knew or should have known that her work environment was negatively impacting her health, as she began experiencing breathing problems and lesions when she began working there, her breathing was “good” when she was away from work, she ultimately left employment because work environment at facility, which she herself described as “very hot” and “sticky” with “a lot of lint and dust in the air,” and poorly ventilated, were making breathing problems worse. Holmes v. National Service Industries, Inc. (S.C. 2011) 395 S.C. 305, 717 S.E.2d 751, rehearing denied. Workers’ Compensation 1199.15

Cause of action for workers’ compensation benefits for a repetitive injury accrued, and the 90‑day limitations period began to run, from the date workers’ compensation claimant received note from her physician that indicated her symptoms were related to the repetitious over‑the‑head work she performed for employer. Murphy v. Owens Corning (S.C.App. 2011) 393 S.C. 77, 710 S.E.2d 454. Workers’ Compensation 1199.11

Two‑year limitations period for workers’ compensation claim for hearing loss began to run when claimant was informed that his hearing loss was moderate and imposed communication handicap, would likely continue to worsen requiring hearing aids, and he was referred to vocational rehabilitation for funding assistance for hearing aids. Schurlknight v. City of North Charleston (S.C.App. 2001) 345 S.C. 45, 545 S.E.2d 833, rehearing denied, reversed 352 S.C. 175, 574 S.E.2d 194. Workers’ Compensation 1199.15

Even though workers’ compensation claimant’s hearing was further degraded each time he rode fire engine, his workers’ compensation claim for hearing loss accrued when he first discovered injury, not after date of his last exposure to noisy environment. Schurlknight v. City of North Charleston (S.C.App. 2001) 345 S.C. 45, 545 S.E.2d 833, rehearing denied, reversed 352 S.C. 175, 574 S.E.2d 194. Workers’ Compensation 1199.15

An employee was entitled to workers’ compensation coverage for an injury received on January 2, 1985, but not filed for until December 30, 1987, where the injury was reported at the time it occurred and was misdiagnosed as a sprain, the case was treated as a “medical only” workers’ compensation claim and closed, and the employee kept the employer advised of continuing problems with the injury until November 1, 1987, when it was correctly diagnosed as a torn medial meniscus, for which surgery was required. Mauldin v. Dyna‑Color/Jack Rabbit (S.C. 1992) 308 S.C. 18, 416 S.E.2d 639, rehearing denied.

The 2‑year limitation period of Section 42‑15‑40 runs from the date of the accident, rather than the date the employee discovers the injury. Mauldin v. Dyna‑Color/Jack Rabbit (S.C.App. 1990) 303 S.C. 326, 400 S.E.2d 494, reversed 308 S.C. 18, 416 S.E.2d 639, rehearing denied. Workers’ Compensation 1199.8

10. Waiver

Compliance with this section [Code 1962 Section 72‑303] may be waived by the employer and its insurance carrier, or they may become estopped by their conduct from asserting the statute as a defense. Poole v E. I. Du Pont De Nemours & Co. (1955) 227 SC 232, 87 SE2d 640. Clements v Greenville County (1965) 246 SC 20, 142 SE2d 212. Hucks v Green’s Fuel of South Carolina (1966) 247 SC 457, 148 SE2d 149.

Under certain circumstances, an employer may waive the filing by an employee of a claim in any form whatever. Lowther v Standard Oil Co. (1945) 206 SC 286, 33 SE2d 889. Young v Sonoco Products Co. (1947) 210 SC 146, 41 SE2d 860. Ashe v Rock Hill Hardware Co. (1951) 219 SC 159, 64 SE2d 396.

The one‑year provision is one which may be waived. Chapman v. Foremost Dairies, Inc. (S.C. 1967) 249 S.C. 438, 154 S.E.2d 845.

A statute of limitation is waived because not made a ground of appeal before the full Commission in compliance with the rule. Chapman v. Foremost Dairies, Inc. (S.C. 1967) 249 S.C. 438, 154 S.E.2d 845.

This section [Code 1962 Section 72‑303] may be waived by failure to invoke it at the appropriate state of the proceeding. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 285, 113 S.E.2d 794.

Where claimant was promised permanent employment, which he preferred to the benefits of workmen’s compensation, and he failed to file claim as required by law, but there was no evidence that the promise was in consideration of his forbearance to file claim, the Supreme Court held there was no evidence of facts upon which to base a binding of waiver or estoppel. Kirby v. Holliday Laundry & Dry Cleaners (S.C. 1957) 230 S.C. 412, 96 S.E.2d 61.

Waiver or estoppel will arise from conduct on the part of the employer or carrier from which it may be reasonably inferred that the claimant was misled or deceived, whether intentionally or not, and thereby failed to file his claim within the year after the accident. Poole v. E. I. Du Pont De Nemours & Co. (S.C. 1955) 227 S.C. 232, 87 S.E.2d 640. Workers’ Compensation 1199.30

11. Estoppel

Estoppel will arise from conduct on the part of the employer or carrier from which it may be reasonably inferred that the claimant as misled or deceived, whether intentionally or not, to believe that the claim is compensable and will be taken care of without its being filed with the Commission within the period limited. Clements v Greenville County (1965) 246 SC 20, 142 SE2d 212. Hucks v Green’s Fuel of South Carolina (1966) 247 SC 457, 148 SE2d 149. Altman v Williams Furniture Co. (1967) 250 SC 98, 156 SE2d 433.

An employer may be estopped to invoke this section [Code 1962 Section 72‑303] if by his conduct he has induced the claimant to believe that the claim is compensable and will be taken care of without its being filed with the Commission within the period limited. Case v Hermitage Cotton Mills (1960) 236 SC 285, 113 SE2d 794. Skipper v Marlowe Mfg. Co., (1963) 42 SC 486, 131 SE2d 524.

Under some circumstances the employer and carrier may be estopped from taking advantage of the employee’s failure to formally file a claim within the one‑year limitation. Young v Sonoco Products Co. (1947) 210 SC 146, 41 SE2d 860. Ashe v Rock Hill Hardware Co. (1951) 219 SC 159, 64 SE2d 396.

In a workers’ compensation action brought by the wife and daughter of a deceased motel employee against the employer and the insurer, the employer and the insurer were not estopped from contesting liability, even though the employer and the insurer had initially told the decedent’s wife that they would not contest liability, since the wife was able to bring the action within the time period of Section 42‑15‑40 after the employer and the insurer decided to contest liability and had access to all information available to them. Bilton v. Best Western Royal Motor Lodge (S.C.App. 1984) 282 S.C. 634, 321 S.E.2d 63.

Act of employer constitute estoppel to plead statute of limitations in workmen’s compensation matters, if the employer made misrepresentations which misled the claimant, who acting upon them in good faith failed to commence his action within the statutory period, and it is not necessary to establish deception, fraud, bad faith or an intent to deceive to bar the employer. Lovell v. C. A. Timbes, Inc. (S.C. 1974) 263 S.C. 384, 210 S.E.2d 610. Workers’ Compensation 1199.30

The one‑year provision is one which the employer‑carrier may be estopped from asserting. Chapman v. Foremost Dairies, Inc. (S.C. 1967) 249 S.C. 438, 154 S.E.2d 845.

The employer and carrier may be estopped to invoke this section [Code 1962 Section 72‑303] if by their conduct they have induced the claimant to believe that his claim is compensable and will be taken care of without its being filed with the Commission within the statutory period. Hucks v. Green’s Fuel of S. C. (S.C. 1966) 247 S.C. 457, 148 S.E.2d 149. Workers’ Compensation 1199.30

Where claimant injured and relied on promises of general manager of employer that he was going to take care of it and not to file a claim, and then realizing about six weeks prior to expiration of period of limitation that she could not rely on such promises engaged an attorney who filed claim about sixty days thereafter the estoppel that existed continued no longer leaving six weeks of limitation period remaining, award of Commission must be affirmed as a factual finding supported by evidence, as claim was filed within reasonable time after estoppel period ended and well within one year thereafter. Court finding it unnecessary to determine whether claimant had reasonable time or one year to file claim after estoppel ceased. Skipper v. Marlowe Mfg. Co. (S.C. 1963) 242 S.C. 486, 131 S.E.2d 524.

Where foreman told injured employee that “the job will take care of you,” and employee did not file claim until two years after accident, even assuming proper reliance by employee on foreman’s statement, such estoppel as may have been created thereby could continue only for such reasonable length of time as would be sufficient to enable employee, in exercise of due diligence, to realize that he could no longer rely upon it. Du Pont v. E. I. Du Pont De Nemours & Co. (S.C. 1957) 231 S.C. 295, 98 S.E.2d 528. Workers’ Compensation 1199.30

Where notice of an accident was not filed by the employer with the Commission as required by law, that does not (in the absence of fraud) raise an estoppel to deny liability under this section [Code 1962 Section 72‑303]. Kirby v. Holliday Laundry & Dry Cleaners (S.C. 1957) 230 S.C. 412, 96 S.E.2d 61. Workers’ Compensation 2082

Under allegations that an employer’s conduct prevented his employee from filing his claim within the statutory period of one year, the employer may be estopped from invoking the one‑year limitation as a defense in a proceeding under the Compensation Act. Gainey v. Coker’s Pedigreed Seed Co. (S.C. 1955) 227 S.C. 200, 87 S.E.2d 486.

Where claimant was injured in 1939 and he relied on promises of employer that he would do something about it until 1940 and then knowing that he could not rely on such promises engaged an attorney, the estoppel that existed continued no longer and an action brought six years later was subject to the statute of limitations. The court expressly refused to consider whether claimant had a reasonable time or one year’s time to bring action after estoppel ceased. Duncan v. Gaffney Mfg. Co. (S.C. 1949) 214 S.C. 502, 53 S.E.2d 396.

12. Pleadings

An objection that the claim for compensation was not made or filed in the requisite time must be raised by the pleadings before the hearing, except where such matter is considered jurisdictional. Chapman v. Foremost Dairies, Inc. (S.C. 1967) 249 S.C. 438, 154 S.E.2d 845.

13. Presumptions and burden of proof

The burden of proof is upon the claimant who asserts an estoppel. Hucks v. Green’s Fuel of S. C. (S.C. 1966) 247 S.C. 457, 148 S.E.2d 149. Estoppel 116

Estoppel is not reasonably inferable from testimony that claimant reported to the company physician several days after a fall but complained only of an unusual period and not of any injury to her back, and the doctor told her that her condition was not the result of her accident and advised her to consult her personal physician, which she did. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 285, 113 S.E.2d 794.

14. Question of fact

Whether, under the discovery rule, a claimant knew or should have known that her injury was related to her employment more than two years before filing her claim is a question of fact for the Workers’ Compensation Commission. Holmes v. National Service Industries, Inc. (S.C. 2011) 395 S.C. 305, 717 S.E.2d 751, rehearing denied. Workers’ Compensation 1726

15. Sufficiency of evidence

Substantial evidence supported finding that workers’ compensation claimant’s disc herniation was result of repetitive trauma, which arose out of and in course of claimant’s employment as nursing assistant at medical university, and thus two‑year limitations period began to run on claimant’s last day of work, not when claimant complained of back pain several years before; prior back injury was not severe enough at that time to warrant any change in work duties. White v. Medical University of South Carolina (S.C.App. 2003) 355 S.C. 560, 586 S.E.2d 157, rehearing denied. Workers’ Compensation 1199.11

Finding that workers’ compensation claim for benefits for occupational disease was not barred by laches was supported by substantial evidence, though claimant failed to mention that he told a co‑worker about his hepatitis and his belief that it was work‑related until the hearing, where claimant testified at a deposition almost six years before that he had told two other co‑employees of his problems soon after reading a report provided to him by plant nurse and there was no evidence that employer was prevented from calling those employees as witnesses. 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 1681

Substantial evidence, including workers’ compensation claimant’s testimony, supported finding that claimant was paid temporary total benefits, for purposes of determining whether such payment constituted filing of claim within meaning of statute setting forth limitations period for filing claim. Rogers v. Spartanburg Regional Medical Center (S.C.App. 1997) 328 S.C. 415, 491 S.E.2d 708, rehearing denied, certiorari granted. Workers’ Compensation 1682

Competent evidence existed to support Commission’s finding that employer and insurance carrier were estopped from asserting failure to file claim within 1 year where widow’s failure to file was due to reliance upon insurer’s statement that, since deceased husband was president and part owner of corporation, death was not compensable. Robertson v. Brissey’s Garage, Inc. (S.C. 1978) 270 S.C. 58, 240 S.E.2d 810.

Overwhelming preponderance of the evidence before the Industrial Commission held to amply justify its conclusion that employer and carrier waived, or were estopped to assert, the defense of the statutory limitation. Poole v. E. I. Du Pont De Nemours & Co. (S.C. 1955) 227 S.C. 232, 87 S.E.2d 640.

Evidence was insufficient to show that the employer and insurance carrier waived the requirement of this section [Code 1962 Section 72‑303] or that compensation claim be filed within one year after accident. Burnhart v. Dunean Mills (S.C. 1949) 214 S.C. 113, 51 S.E.2d 377.

16. Review

Workers’ compensation claimant’s notice of appeal, which stated that Commission erred in finding as a fact and concluding as a matter of law that claimant was not entitled to benefits, was sufficient to comply with statutory requirement that notice of appeal to circuit court state grounds of appeal or alleged errors of law, since Commission’s findings and conclusions only addressed issue of statute of limitations. White v. Medical University of South Carolina (S.C.App. 2003) 355 S.C. 560, 586 S.E.2d 157, rehearing denied. Workers’ Compensation 1884

**SECTION 42‑15‑50.** Limitation of time on notice or claim of mentally incompetent person or minor.

 No limitation of time provided in this title for the giving of notice or making claim under this title shall run against any person who is mentally incompetent or a minor dependent as long as he has no guardian, trustee or committee.

HISTORY: 1962 Code Section 72‑304; 1952 Code Section 72‑304; 1942 Code Section 7035‑52; 1936 (39) 1231.

Library References

Workers’ Compensation 1199.13, 1199.14, 1237, 1238.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 948, 952 to 953, 972.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 301:11, Incapacity.

NOTES OF DECISIONS

In general 1

1. In general

The phrase “mentally incompetent” cannot be held to apply to a person merely because he may perhaps be ignorant of his legal rights. This phrase in its ordinary meaning imports mental deficiency so great as to render one unable to comprehend or transact the ordinary affairs of life. Edge v. Dunean Mills (S.C. 1943) 202 S.C. 189, 24 S.E.2d 268.

**SECTION 42‑15‑55.** Appointment of guardian ad litem for minors or mentally incompetent persons.

 When a minor or mentally incompetent person is a party in a proceeding before the Workers’ Compensation Commission of this State a guardian ad litem for the minor or mentally incompetent person may be appointed by a judge of probate, clerk of court, or master, if there is a master, of the county where the minor or mentally incompetent person resides or by any circuit judge or a member of the Workers’ Compensation Commission.

HISTORY: 1986 Act No. 371, eff April 14, 1986.

Library References

Workers’ Compensation 1190.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 928 to 931.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 302:2, Petitioners.

**SECTION 42‑15‑60.** Time period medical treatment and supplies furnished; refusal to accept treatment; settled claims; total and permanent disability.

 (A) The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty. In addition to it, the original artificial members as reasonably may be necessary must be provided by the employer. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. The refusal of an employee to accept any medical, hospital, surgical, or other treatment or evaluation when provided by the employer or ordered by the commission bars the employee from further compensation until the refusal ceases and compensation is not paid for the period of refusal unless in the opinion of the commission the circumstances justified the refusal, in which case the commission may order a change in the medical or hospital service. If in an emergency, on account of the employer’s failure to provide the medical care as specified in this section, a physician other than provided by the employer is called to treat the employee, the reasonable cost of the service must be paid by the employer, if ordered by the commission.

 (B)(1) When a claim is settled on the commission’s Agreement for Permanent Disability/Disfigurement Compensation form, the employer is not required to provide further medical treatment or medical modalities after one year from the date of full payment of the settlement unless the form specifically provides otherwise.

 (2) Each award of permanency as ordered by the single commissioner or by the commission must contain a finding as to whether or not further medical treatment or modalities must be provided to the employee. If the employee is entitled to receive such benefits, the medical treatment or modalities to be provided must be set forth with as much specificity as possible in the single commissioner’s order or the commission’s order.

 (3) In no case shall an employer be required to provide medical treatment or modalities in any case where there is a lapse in treatment of the employee by an authorized physician in excess of one year unless:

 (a) the settlement agreement or commission order provides otherwise; or

 (b) the employee has made reasonable attempts to obtain further treatment or modality from an authorized physician, but through no fault of the employee’s own, is unable to obtain such treatment or modalities.

 (C) In cases in which total and permanent disability results, reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care shall be paid during the life of the injured employee, without regard to any limitation in this title including the maximum compensation limit. In cases of permanent partial disability, prosthetic devices shall be furnished during the life of the injured employee or for as long as such devices are necessary.

HISTORY: 1962 Code Section 72‑305; 1952 Code Section 72‑305; 1942 Code Section 7035‑28; 1936 (39) 1231; 1972 (57) 2339; 1980 Act No. 445; 2007 Act No. 111, Pt I, Section 27, eff July 1, 2007, applicable to injuries that occur on or after that date.

CROSS REFERENCES

Suspending temporary compensation after the first one hundred fifty days after the employer’s notice of the injury, see S.C. Code of Regulations R. 67‑505.

Library References

Workers’ Compensation 965 to 991.5, 995.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 544 to 545, 547 to 562, 564 to 567.

RESEARCH REFERENCES

ALR Library

3 ALR 5th 907 , What Amounts to Failure or Refusal to Submit to Medical Treatment Sufficient to Bar Recovery of Workers’ Compensation.

63 ALR 5th 163 , Compensability of Specially Equipped Van or Vehicle Under Workers’ Compensation Statutes.

Encyclopedias

40 Am. Jur. Proof of Facts 2d 603, Employer’s Tort Liability Under Dual Capacity Doctrine.

Treatises and Practice Aids

Modern Workers’ Compensation Section 202:5, Requirement that Treatment be Necessary.

Modern Workers’ Compensation Section 321:8, Medical Benefits.

Modern Workers’ Compensation Section 202:12, Artificial Members.

Modern Workers’ Compensation Section 202:30, Travel Expenses.

Modern Workers’ Compensation Section 202:33, Period of Treatment.

Modern Workers’ Compensation Section 202:36, Employer Failure to Provide Care.

Modern Workers’ Compensation Section 202:38, Refusal of Treatment.

Modern Workers’ Compensation Section 321:18, Selection of Physician.

LAW REVIEW AND JOURNAL COMMENTARIES

1978 Survey: Administrative Law: Workmen’s Compensation; Continuing Medical Expenses. 29 S.C. L. Rev. 15.

Extraordinary and unusual circumstances: compensability of psychological injuries under South Carolina’s Workers’ Compensation Law. Jordan Michael Janoski, 64 S.C. L. Rev. 1063 (Summer 2013).

NOTES OF DECISIONS

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1. In general

Employer’s responsibility for providing medical treatment to covered employees under the Workers’ Compensation Act is limited to ten weeks following an injury, and to hold an employer liable for medical expenses beyond this time period, Workers’ Compensation Commission must decide that, based upon a heightened standard of medical evidence, additional treatment would tend to lessen the claimant’s period of disability. Hartzell v. Palmetto Collision, LLC (S.C.App. 2016) 419 S.C. 87, 796 S.E.2d 145, rehearing denied. Workers’ Compensation 983; Workers’ Compensation 984

Generally, a workers’ compensation claimant may obtain compensation only by accepting services from the employer’s choice of providers; however, a claimant is not required to sacrifice much‑needed treatment merely to comply with an employer’s choice of physicians. Clark v. Aiken County Government (S.C.App. 2005) 366 S.C. 102, 620 S.E.2d 99. Workers’ Compensation 974

Medical benefits provision of Workers’ Compensation Act allows the Worker’s Compensation Commission to award medical benefits beyond 10 weeks from the date of injury only where the Commission determines such medical treatment would tend to lessen the period of disability. Dodge v. Bruccoli, Clark, Layman, Inc. (S.C.App. 1999) 334 S.C. 574, 514 S.E.2d 593. Workers’ Compensation 983

There is no liability on the part of an employer to furnish medical treatment to an injured employee beyond ten weeks from the date of injury unless in the judgment of the Commission it “will tend to lessen the period of disability.” Dykes v. Daniel Const. Co. (S.C. 1974) 262 S.C. 98, 202 S.E.2d 646. Workers’ Compensation 983

Where the Commission found that further medical care was necessary and should be furnished under this section [Code 1962 Section 72‑305], implicit in such award is the finding that additional medical treatment will tend to lessen the period of disability, for on no other ground could liability for additional treatment be based under this section [Code 1962 Section 72‑305]. Dykes v. Daniel Const. Co. (S.C. 1974) 262 S.C. 98, 202 S.E.2d 646.

The term “disability,” as used in the Workmen’s Compensation Act, means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment. Williams v. Boyle Const. Co. (S.C. 1969) 252 S.C. 387, 166 S.E.2d 550.

As to recovery by employee on hospital and surgical expense insurance policy, notwithstanding payment of such expenses pursuant to this section [Code 1962 Section 72‑305], see Shealey v. American Health Ins. Corp. (S.C. 1951) 220 S.C. 79, 66 S.E.2d 461, 27 A.L.R.2d 942.

Statute requiring that the employer pay for medical treatment during the life of the injured employee does not allow employer to dictate the medical treatment of employee. Risinger v. Knight Textiles (S.C.App. 2002) 353 S.C. 69, 577 S.E.2d 222, rehearing denied, certiorari denied. Workers’ Compensation 974

2. Construction and application

1980 amendment to Section 42‑15‑60, pertaining to lifetime prosthesis repair and replacement, is remedial in nature and therefore should be given retroactive effect. Smith v. Eagle Const. Co., Inc. (S.C. 1984) 282 S.C. 140, 318 S.E.2d 8.

3. Particular cases

Workers’ Compensation Commission erred in awarding medical benefits without expert medical evidence when more than ten weeks had elapsed since claimant’s alleged injury, given statute, providing that employer shall provide medical treatment for a period not exceeding ten weeks from the date of an injury and for an additional time, as in the judgment of the Commission, will tend to lessen the period of disability as evidenced by expert medical evidence. Hartzell v. Palmetto Collision, LLC (S.C.App. 2016) 419 S.C. 87, 796 S.E.2d 145, rehearing denied. Workers’ Compensation 984

Appellate Panel did not abuse its discretion by authorizing additional back surgery for workers’ compensation claimant, though such surgery was not prescribed by the authorized physician, when pain in claimant’s back and lower extremities continued to worsen after authorized physician performed two surgeries, claimant sought a second opinion, after second physician indicated that further surgical intervention might be helpful claimant specifically requested authorization for the suggested treatment, claimant testified that if employer and employer’s carrier had referred him to another doctor he would have complied with that referral, and there was evidence that surgery performed by second physician was beneficial, though claimant suffered complications necessitating additional medical treatment. Hall v. United Rentals, Inc. (S.C.App. 2006) 371 S.C. 69, 636 S.E.2d 876. Workers’ Compensation 967; Workers’ Compensation 974

Workers’ compensation claimant, whose work‑related injury resulted in paraplegia, was entitled to recover from employer and insurance carrier funds needed to upfit new home to accommodate claimant’s special needs, although employer and carrier had already paid for upfit of claimant’s rental home; claimant could not live in new home without modifications, claimant never intended to permanently reside in rental home, and substantial additional modifications would have been required to rental home if claimant were to remain in rental home. Thompson v. South Carolina Steel Erectors (S.C.App. 2006) 369 S.C. 606, 632 S.E.2d 874, rehearing denied, certiorari denied. Workers’ Compensation 968

Workers’ Compensation Commission order that required employer to pay for back surgery and continuing treatment for claimant, even though claimant had sought and obtained treatment from a non‑employer approved provider, was not an abuse of discretion; claimant saw the employer recommended physician, that physician opined that claimant was not a suitable candidate for back surgery and referred him for pain management, pain management treatment was not successful and claimant continued to have symptoms, and thus he was justified in seeking treatment elsewhere. Clark v. Aiken County Government (S.C.App. 2005) 366 S.C. 102, 620 S.E.2d 99. Workers’ Compensation 976

Under dual persona doctrine, Workers’ Compensation Act’s exclusivity provisions did not bar state university employee’s action against university for injuries allegedly resulting from negligent medical care rendered by university‑employed surgeon who treated employee for work‑related injury; employee was not working in capacity for which university hired her when she was injured by physician’s alleged malpractice, and because university’s role as employer ended when it referred employee to its surgeon for treatment, and because university then took on legally distinct persona of her treating hospital, university’s medical treatment of employee was same as its treatment of any member of general public and bore no relation to its other persona as employer. Tatum v. Medical University of South Carolina (S.C.App. 1999) 335 S.C. 499, 517 S.E.2d 706, rehearing denied, certiorari granted, reversed 346 S.C. 194, 552 S.E.2d 18. Workers’ Compensation 2253

Workers’ compensation statute requiring employer to pay for other reasonable treatment or care of totally and permanently disabled workers’ compensation claimant did not require employer to pay for full cost of unmodified van for use by quadriplegic claimant. Strickland v. Bowater, Inc. (S.C.App. 1996) 322 S.C. 471, 472 S.E.2d 635. Workers’ Compensation 968

An employee was entitled to the cost of replacement dentures and the payment of dentist bills through workers’ compensation where she was an employee of the Department of Youth Services, 2 youths were involved in an altercation which she attempted to end, and in the process she was hit in the mouth, thus injuring her lip and breaking her dentures; injury to, or destruction of, a prosthesis is a “physical injury” for workers’ compensation purposes. Corbett v. South Carolina Dept. of Youth Services (S.C. 1992) 307 S.C. 270, 414 S.E.2d 778.

An injured worker was entitled to workers’ compensation benefits for his work‑related injury where he was injured in an on‑the‑job accident, was incarcerated on unrelated criminal charges 2 months later, and thus missed further appointments with his attending physician, since an employee’s justified refusal to accept the medical care provided by his employer does not bar him from compensation, and the record did not show that the employee refused medical treatment after a doctor was made available to him while incarcerated. Last v. MSI Const. Co., Inc. (S.C. 1991) 305 S.C. 349, 409 S.E.2d 334.

Claimant was justified in refusing further medical treatment where she was 61 years old at time of hearing and had heart problem, doctor testified he told her myelogram was test not to be taken lightly, doctor stated there was 25 to 30 percent chance her condition would remain same or become worse after surgery, and claimant testified she had seriously considered surgery but in light of her age and other factors felt it would not benefit her. Scruggs v. Tuscarora Yarns, Inc. (S.C.App. 1987) 294 S.C. 47, 362 S.E.2d 319, 72 A.L.R.4th 899. Workers’ Compensation 1647.11(2)

A construction company employee who lost his right leg, and part of his pelvis and trunk as a result of an accident involving a back hole while performing duties in the scope of his employment, was entitled to lifetime prosthesis repair and replacement under the 1980 amendment to Section 42‑15‑60 since the enactment was remedial and would be afforded retroactive effect. Smith v. Eagle Const. Co., Inc. (S.C. 1984) 282 S.C. 140, 318 S.E.2d 8. Workers’ Compensation 980

Prosthetic devices do not constitute treatment tending to lessen period of disability for purposes of Section 42‑15‑60. Smith v. Eagle Const. Co., Inc. (S.C. 1984) 282 S.C. 140, 318 S.E.2d 8.

Damage to a prosthetic device, which was incurred in an accident arising out of and in the course of employment, but was unaccompanied by compensable bodily injury, was not an injury under Section 42‑1‑160, and was therefore not compensable under Section 42‑15‑60. Lail v. Richland Wrecking Co., Inc. (S.C.App. 1984) 280 S.C. 532, 313 S.E.2d 342. Workers’ Compensation 512

Industrial commission had jurisdiction to award additional medical benefits beyond 10‑week period where, given the considerable determination and success of claimant quadriplegic in acquiring marketable skills, and considering his very favorable attitude toward rehabilitation, it was reasonable to expect that claimant would regain economic self‑sufficiency and that the medical treatment sought would lessen the period of disability. Rice v. Froehling & Robertson, Inc. (S.C. 1976) 267 S.C. 155, 226 S.E.2d 705.

Although claimant’s physical condition as a quadriplegic would not be changed by additional medical treatment beyond 10‑week period, claimant was entitled to surgical implantation of a dorsal column stimulator and a bladder stimulator since such devices would tend to lessen the claimant’s disability by reducing the pain and chronic urinary tract infection which were obstacles to claimant’s course of training and eventual self‑sufficiency. Rice v. Froehling & Robertson, Inc. (S.C. 1976) 267 S.C. 155, 226 S.E.2d 705.

Portion of industrial commission’s order that employer pay “for such medical costs as will hereafter be incurred by claimant for medical services rendered by the Durham Rehabilitation Center” was too vague to be enforceable, especially since future medical treatment of quadriplegic claimant could have been far ranging. Rice v. Froehling & Robertson, Inc. (S.C. 1976) 267 S.C. 155, 226 S.E.2d 705. Workers’ Compensation 999

Although claimant had not sustained a 100% loss of vision in his left eye and was presently employed, without continuing treatment and medication he would no doubt have sustained a loss of wages through inability to function properly due to incapacitating pain in his injured eye; hence further medical treatment would “tend to lessen the period of disability” of respondent, within the meaning of this section [Code 1962 Section 72‑305]. Dykes v. Daniel Const. Co. (S.C. 1974) 262 S.C. 98, 202 S.E.2d 646.

Where the Commission found as a fact that the medical care had a tendency to restore the injured employee to good health, and an earlier finding that such treatment in the judgment of the Commission would tend to lessen the period of disability was premature, the case must be remanded to the circuit court for the purpose of being in turn remanded to the Commission with instructions that both appellants and respondents be permitted to offer testimony upon the question of whether the medical treatment beyond the ten weeks’ period would, in the judgment of the Commission, tend to lessen the period of disability and that a determination thereon be made by the Commission. Prince v. C. Y. Thomason Co. (S.C. 1960) 236 S.C. 215, 113 S.E.2d 742.

Where, when claimant first received an eye injury, he attempted to treat it himself, and when he reported the accident to his foreman the latter casually suggested that a doctor be consulted but named no doctor and did not intimate that the employer would bear the expense, and claimant, after receiving treatment for four or five weeks from a doctor who looked solely to claimant for payment, refused to proceed further with the treatment, the facts did not bring the case within this section [Code 1962 Section 72‑305] so as to bar claimant from recovery because of his refusal to accept treatment furnished by the employer. Ferguson v. State Highway Department (S.C. 1941) 197 S.C. 520, 15 S.E.2d 775.

Workers had to suffer disability within meaning of South Carolina Workers’ Compensation Act for their asbestosis to be treated as “injury” within meaning of the Act, and thus workers who did not suffer any lost wages resulting from asbestosis could not have claims for medical treatment under the Act. Southern v. Bishoff (C.A.4 (S.C.) 2017) 675 Fed.Appx. 239, 2017 WL 118016. Workers’ Compensation 549.2; Workers’ Compensation 962

Conduct of personal injury attorneys pursuing asbestos claims on behalf of workers without representing or advising them on their workers’ compensation claims was not clear and serious violation, and thus such conduct was not breach of fiduciary duty under South Carolina law and could not support fee disgorgement, where those workers did not have viable claims at time those attorneys commenced representing them. Southern v. Bishoff (C.A.4 (S.C.) 2017) 675 Fed.Appx. 239, 2017 WL 118016. Attorney and Client 109; Attorney and Client 153

4. Period of disability

The medical benefits provision of the Workers’ Compensation Act allows the Appellate Panel to award medical benefits beyond ten weeks from the date of injury only where it determines such medical treatment would tend to lessen the period of disability. Hall v. United Rentals, Inc. (S.C.App. 2006) 371 S.C. 69, 636 S.E.2d 876. Workers’ Compensation 984

Award of medical benefits to workers’ compensation claimant commenced on March 19, given that, when claimant filed for short‑term disability, he listed March 8 as the date of onset of the symptoms for excessive fatigue and the week of February 15‑19 as the first onset of symptoms for the back injury and given statute providing that medical benefits shall be provided for a period not exceeding ten weeks from the date of injury. Smith v. NCCI, Inc. (S.C.App. 2006) 369 S.C. 236, 631 S.E.2d 268, rehearing denied. Workers’ Compensation 983

Medical benefits provision of Worker’s Compensation Act does not by its terms equate an employer’s liability for medical treatment to any other period of liability, for income compensation or otherwise. Dodge v. Bruccoli, Clark, Layman, Inc. (S.C.App. 1999) 334 S.C. 574, 514 S.E.2d 593. Workers’ Compensation 961

The medical benefits provision of Workers’ Compensation Act defines the period of disability during which an employee may recover medical benefits in terms of the time period in which the employee is statutorily incapacitated. Dodge v. Bruccoli, Clark, Layman, Inc. (S.C.App. 1999) 334 S.C. 574, 514 S.E.2d 593. Workers’ Compensation 983

Under medical benefits provision of the Workers’ Compensation Act, the employer is liable for medical treatment which will tend to lessen the time in which injury renders an employee incapable to earn the wages which the employee was receiving at the time of injury in the same or other employment. Dodge v. Bruccoli, Clark, Layman, Inc. (S.C.App. 1999) 334 S.C. 574, 514 S.E.2d 593. Workers’ Compensation 966

5. Maximum medical improvement

The fact a claimant has reached maximum medical improvement (MMI) does not preclude a finding the claimant may still require additional medical care or treatment. Hall v. United Rentals, Inc. (S.C.App. 2006) 371 S.C. 69, 636 S.E.2d 876. Workers’ Compensation 984

An employer may be liable for a workers’ compensation claimant’s future medical treatment if it tends to lessen the claimant’s period of disability despite the fact the claimant has returned to work and has reached maximum medical improvement (MMI). Hall v. United Rentals, Inc. (S.C.App. 2006) 371 S.C. 69, 636 S.E.2d 876. Workers’ Compensation 984

Generally, even though a workers’ compensation claimant has reached maximum medical improvement (MMI), if additional medical care or treatment would tend to lessen the period of disability, then the Appellate Panel may be warranted in requiring such treatment to at least maintain the claimant’s degree of physical impairment. Hall v. United Rentals, Inc. (S.C.App. 2006) 371 S.C. 69, 636 S.E.2d 876. Workers’ Compensation 984

Employer was liable for medical expenses for work‑related back injury, sustained at same time as work‑related leg injury, only through the date that he reached maximum medical improvement (MMI) from back injury, and not until claimant had reached MMI from leg injury as well, absent evidence that any treatment received for back between MMI dates was undertaken to lessen the period of disability. Hendricks v. Pickens County (S.C.App. 1999) 335 S.C. 405, 517 S.E.2d 698, rehearing denied. Workers’ Compensation 966; Workers’ Compensation 971

Under workers’ compensation law, a finding of maximum medical improvement (MMI) indicates that a person has reached such a plateau that in the physician’s opinion there is no further medical care or treatment which will lessen the degree of impairment. Dodge v. Bruccoli, Clark, Layman, Inc. (S.C.App. 1999) 334 S.C. 574, 514 S.E.2d 593. Workers’ Compensation 870.4

Whether medical treatment rendered after workers’ compensation claimant reached maximum medical improvement (MMI) tended to lessen claimant’s period of disability was question of fact to be determined by Workers’ Compensation Commission, requiring remand. Dodge v. Bruccoli, Clark, Layman, Inc. (S.C.App. 1999) 334 S.C. 574, 514 S.E.2d 593. Workers’ Compensation 1001

Finding that workers’ compensation claimant had reached maximum medical improvement (MMI) did not preclude award of additional medical benefits for purposes of lessening the period of disability. Dodge v. Bruccoli, Clark, Layman, Inc. (S.C.App. 1999) 334 S.C. 574, 514 S.E.2d 593. Workers’ Compensation 984

An employer may be liable for a workers’ compensation claimant’s future medical treatment if it tends to lessen the claimant’s period of disability despite the fact the claimant has returned to work and has reached maximum medical improvement. Dodge v. Bruccoli, Clark, Layman, Inc. (S.C.App. 1999) 334 S.C. 574, 514 S.E.2d 593. Workers’ Compensation 984

6. Casual relation

Employee’s fatal automobile accident while returning home from medical visit occurred while she was fulfilling her duty under workers’ compensation law to submit to medical treatment for a previous compensable injury, and her injuries therefore arose out of and were sustained in course of her employment, even though her medical visit on that particular day was unscheduled. Shuler v. Gregory Elec. (S.C.App. 2005) 366 S.C. 435, 622 S.E.2d 569, rehearing denied, certiorari denied. Workers’ Compensation 619.5

When an employer authorizes an employee to seek medical attention for a prior injury and the employee sustains additional injuries while fulfilling her obligation to submit to medical treatment, such additional injuries are sufficiently causally related to employment to be compensable. Shuler v. Gregory Elec. (S.C.App. 2005) 366 S.C. 435, 622 S.E.2d 569, rehearing denied, certiorari denied. Workers’ Compensation 626

Medical treatment for heart condition that was not causally related to claimant’s workers’ compensation back injury, for which he had been awarded permanent disability benefits and lifetime medical treatment, was not “reasonable and necessary” and, thus, was not compensable; although workers’ compensation medical benefits statute providing for lifetime medical treatment in cases of total and permanent disability does not explicitly state that medical treatment must be causally related to original compensable injury, statute does require the employer to furnish medical treatment from the date of “an injury” and, thus, implies that payment for medical treatment in cases of permanent disability would be paid only if related to the original compensable injury. Munn v. Nucor Steel, Div. of Nucor Corp. (S.C.App. 1999) 336 S.C. 28, 518 S.E.2d 289. Workers’ Compensation 972

7. Appointment of physician

Workers’ compensation statute, which establishes the rights of the employer and the employee with regard to payment for treatments, does not give a unilateral right to claimants to select their treating physician, and such an unencumbered right undermines the authority of the Workers’ Compensation Commission, as prescribed by the legislature. Turner v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2008) 377 S.C. 540, 661 S.E.2d 118, rehearing denied, certiorari denied. Workers’ Compensation 974

Employer, rather than workers’ compensation claimant, was entitled to select claimant’s treating physician after commissioner determined that claimant was permanently and totally disabled. McKinney v. Kimberly Clark Corp. (S.C.App. 2008) 376 S.C. 636, 658 S.E.2d 112. Workers’ Compensation 974

Appointing workers’ compensation claimant’s physician as authorized treating physician was warranted in workers’ compensation proceeding; additional treatment would have lessened claimant’s disability from back injury, and refusal by employer’s medical group to see claimant and physician’s subsequent diagnosis of annular tear created controversy warranting appointment of provider other than employer’s chosen provider. Martin v. Rapid Plumbing (S.C.App. 2006) 369 S.C. 278, 631 S.E.2d 547, rehearing denied. Workers’ Compensation 974

The full Workers’ Compensation Commission, when it deems it necessary, may override the employer’s choice of providers and order a change in the medical or hospital service provided; the full commission is further empowered to order payment of medical bills in such cases. Clark v. Aiken County Government (S.C.App. 2005) 366 S.C. 102, 620 S.E.2d 99. Workers’ Compensation 974

Workers’ Compensation Act does not limit the commission’s ability to order a change in medical care provided to claimant to in‑state providers. Gattis v. Murrells Inlet VFW No. 10420 (S.C.App. 2003) 353 S.C. 100, 576 S.E.2d 191, rehearing denied, certiorari denied. Workers’ Compensation 974

Where it deems it necessary, the full commission may override an employer’s choice of medical provider and may excuse a workers’ compensation claimant’s justified refusal to seek treatment from employer’s provider; in these circumstances, the commission may order a change in the medical or hospital service provided by employer to the claimant. Gattis v. Murrells Inlet VFW No. 10420 (S.C.App. 2003) 353 S.C. 100, 576 S.E.2d 191, rehearing denied, certiorari denied. Workers’ Compensation 981

8. Sufficiency of evidence

Substantial evidence supported denial by Workers’ Compensation Commission of benefits for future medical treatment for claimant’s back; orthopedic surgeon to whom claimant was referred diagnosed claimant with a lumbar strain/sprain, concluded it was acceptable for claimant to take an occasional muscle relaxant for muscle spasms and wrote claimant a 30‑day prescription, and opined that claimant suffered no permanent impairment to back. Cranford v. Hutchinson Const. (S.C.App. 2012) 399 S.C. 65, 731 S.E.2d 303, rehearing denied. Workers’ Compensation 998.6(5)

There was substantial evidence to support the Workers’ Compensation Commission’s decision not to declare claimant’s doctors the authorized physicians; workers’ compensation statute, which established the rights of the employer and the employee with regard to payment for treatments, did not give a unilateral right to claimants to select their treating physician, and such an unencumbered right undermined the authority of the Workers’ Compensation Commission, as prescribed by the legislature. Turner v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2008) 377 S.C. 540, 661 S.E.2d 118, rehearing denied, certiorari denied. Workers’ Compensation 998.6(4)

9. Review

Use by Appellate Panel of the Workers’ Compensation Commission of statute providing that no compensation shall be payable if the injury or death was occasioned by the intoxication of the employee was a scrivener’s error, as there was no evidence showing that employee was under the influence of intoxication, and the Appellate Panel’s error in citing this statute was not prejudicial; instead, the Panel intended to cite law which discussed medical benefits, and indeed, the Appellate Panel cited to this law when concluding employer was only responsible for the medical care claimant received. Sanders v. Wal‑Mart Stores, Inc. (S.C.App. 2008) 379 S.C. 554, 666 S.E.2d 297. Workers’ Compensation 1937

Employer failed to preserve for appellate review by Court of Appeals its claim that trial court erred in affirming order of Workers’ Compensation Commission’s appellate panel that claimant’s physician be named authorized treating physician; employer failed to object, failed to have the issue ruled on by trial court, and did not file a timely motion for reconsideration. Martin v. Rapid Plumbing (S.C.App. 2006) 369 S.C. 278, 631 S.E.2d 547, rehearing denied. Workers’ Compensation 1001

**SECTION 42‑15‑65.** Compensation for damage to prosthetic device, eyeglasses, or hearing aid.

 Damage to a prosthetic device of an injured employee as the result of an injury by accident arising out of and in the course of the employment entitles the employee to compensation ensuring that the prosthetic device is repaired or replaced.

 Damage to eye glasses or a hearing aid used by an injured employee as the result of an injury by accident arising out of and in the course of the employment entitles the employee to compensation ensuring that the eye glasses or the hearing aid is repaired or replaced.

HISTORY: 1992 Act No. 329, Section 1, eff May 4, 1992.

Library References

Workers’ Compensation 966.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 545, 552 to 555, 559.

**SECTION 42‑15‑70.** Liability of employer for medical treatment; effect of malpractice.

 The pecuniary liability of the employer for medical, surgical and hospital service or other treatment required, when ordered by the commission, shall be limited to such charges as prevail in the community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person and the employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

HISTORY: 1962 Code Section 72‑306; 1952 Code Section 72‑306; 1942 Code Section 7035‑29; 1936 (39) 1231.

Library References

Workers’ Compensation 990.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 551.

RESEARCH REFERENCES

Encyclopedias

40 Am. Jur. Proof of Facts 2d 603, Employer’s Tort Liability Under Dual Capacity Doctrine.

Treatises and Practice Aids

Modern Workers’ Compensation Section 202:39, Cost Containment.

LAW REVIEW AND JOURNAL COMMENTARIES

1978 Survey: Administrative Law: Workmen’s Compensation; Continuing Medical Expenses. 29 S.C. L. Rev. 15.

Products Liability ‑ An Analysis of the Law Concerning Design and Warning Defects in Workplace Products. 33 S.C. L. Rev. 273 (December 1981).

Attorney General’s Opinions

While South Carolina law may require Workers’ Compensation Commission’s approval for physicians’ fees for covered service, the law of the locale where the contract is entered and where the professional services are provided would likely be controlling. Further, it is doubtful that the prevailing medical rate in South Carolina can be used to review out‑of‑state physician fees for medical services. 1986 Op.Atty.Gen., No. 86‑107, p 325, 1986 WL 192065.

NOTES OF DECISIONS

In general 1

1. In general

Employer and its workers’ compensation carrier were responsible for the medical costs associated with consequential injuries that claimant received as a result of surgery conducted by physician who was not the treating physician selected by employer, as statute indicated that new injuries resulting indirectly from treatment for the original injury were compensable. Hall v. United Rentals, Inc. (S.C.App. 2006) 371 S.C. 69, 636 S.E.2d 876. Workers’ Compensation 597; Workers’ Compensation 974

Statute that insulates employer from liability for treating physician’s negligence merely because employer exercised control in choosing physician does not bar medical malpractice suit against negligent treating physician. Tatum v. Medical University of South Carolina (S.C.App. 1999) 335 S.C. 499, 517 S.E.2d 706, rehearing denied, certiorari granted, reversed 346 S.C. 194, 552 S.E.2d 18. Workers’ Compensation 2253

Under dual persona doctrine, Workers’ Compensation Act’s exclusivity provisions did not bar state university employee’s action against university for injuries allegedly resulting from negligent medical care rendered by university‑employed surgeon who treated employee for work‑related injury; employee was not working in capacity for which university hired her when she was injured by physician’s alleged malpractice, and because university’s role as employer ended when it referred employee to its surgeon for treatment, and because university then took on legally distinct persona of her treating hospital, university’s medical treatment of employee was same as its treatment of any member of general public and bore no relation to its other persona as employer. Tatum v. Medical University of South Carolina (S.C.App. 1999) 335 S.C. 499, 517 S.E.2d 706, rehearing denied, certiorari granted, reversed 346 S.C. 194, 552 S.E.2d 18. Workers’ Compensation 2253

Liability of employer for unexpected effects of medical treatment, such as inoculation required by the employer, is imposed in this State. Whitfield v. Daniel Const. Co. (S.C. 1954) 226 S.C. 37, 83 S.E.2d 460.

Where prescription of drugs necessitated by original compensable head injury impaired the mental and physical facilities of deceased, thereby causing him to lose control of truck and crash into bridge, his death was compensable. Whitfield v. Daniel Const. Co. (S.C. 1954) 226 S.C. 37, 83 S.E.2d 460. Workers’ Compensation 959

**SECTION 42‑15‑80.** Submission to physical examinations; admissibility of communications to physician; autopsy; role of rehabilitation professionals.

 (A) After an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the commission, shall submit himself to examination, at reasonable times and places, by a qualified physician or surgeon designated and paid by the employer or the commission. The employee has the right to have present at the examination any qualified physician or surgeon provided and paid by him. A fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, is not privileged, either in hearings provided for by this title or any action at law brought to recover damages against an employer who may have accepted the compensation provisions of this title. If the employee refuses to submit himself to or in any way obstructs the examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute a proceeding under this title must be suspended until the refusal or objection ceases and compensation is not payable at any time for the period of suspension unless in the opinion of the commission the circumstances justify the refusal or obstruction. The employer or the commission may require in any case of death an autopsy at the expense of the person requesting it.

 (B) The commission shall promulgate regulations establishing the role of rehabilitation professionals and other similarly situated professionals in workers’ compensation cases with consideration given to these persons’ duties to both the employer and the employee and the standards of care applicable to the rehabilitation professional or other similarly situated professional as the case may be.

HISTORY: 1962 Code Section 72‑307; 1952 Code Section 72‑307; 1942 Code Section 7035‑30; 1936 (39) 1231; 2007 Act No. 111, Pt I, Section 28, eff July 1, 2007, applicable to injuries that occur on or after that date.

CROSS REFERENCES

Suspending temporary compensation after the first one hundred fifty days after the employer’s notice of the injury, see S.C. Code of Regulations R. 67‑505.

Library References

Workers’ Compensation 1305 to 1315.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 993 to 1003.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 304:1, Employee’s Duty to Submit to Examination.

Modern Workers’ Compensation Section 304:2, Employee Rights During Examination.

Modern Workers’ Compensation Section 304:4, Sanctions for Noncompliance With Examination Request.

Modern Workers’ Compensation Section 304:5, Examination Results Testimony or Reports.

Modern Workers’ Compensation Section 304:9, Autopsies.

Modern Workers’ Compensation Section 321:18, Selection of Physician.

NOTES OF DECISIONS

In general 1

Refusal to submit to examination 2

Sufficiency of evidence 3

1. In general

Request for the examination is as effective under the terms of this section [Code 1962 Section 72‑307] as an order from the Commission. Simpkins v Lumbermens Mut. Casualty Co. (1942) 200 SC 228, 20 SE2d 733. Hill v Skinner (1940) 195 SC 330, 11 SE2d 386.

This section [Code 1962 Section 72‑307] does not require that the employer must wait until the claimant has filed with the Commission a written claim for compensation before making his demand for a physical examination of the claimant. Such requirement would defeat the purpose of such examination. Simpkins v Lumbermens Mut. Casualty Co. (1942) 200 SC 228, 20 SE2d 733. Hill v Skinner (1940) 195 SC 330, 11 SE2d 386.

Workers’ compensation statutes and regulations compel a physician to provide employers with all medical information and facts relevant to the claim communicated to them by an employee during treatment. Brown v. Bi‑Lo, Inc. (S.C.App. 2000) 341 S.C. 611, 535 S.E.2d 445, rehearing denied, certiorari granted, certiorari granted, reversed 354 S.C. 436, 581 S.E.2d 836. Workers’ Compensation 1305

A physician does not breach his or her duty of confidentiality by providing medical information relevant to an employee’s claim to an employer or its representative in workers’ compensation cases because the law compels a physician to do so. Brown v. Bi‑Lo, Inc. (S.C.App. 2000) 341 S.C. 611, 535 S.E.2d 445, rehearing denied, certiorari granted, certiorari granted, reversed 354 S.C. 436, 581 S.E.2d 836. Workers’ Compensation 1305

The Commission is empowered under this section [Code 1962 Section 72‑307] to order an examination of claimant by nonresident physicians. If the Commission should abuse its discretion in this respect, such abuse is subject to correction by the courts. Ward v. Dixie Shirt Co. (S.C. 1953) 223 S.C. 448, 76 S.E.2d 605.

Denial of employer’s motion for physical examination of employee held abuse of discretion. Cord v. E. H. Hines Const. Co. (S.C. 1951) 220 S.C. 356, 67 S.E.2d 677.

This section [Code 1962 Section 72‑307] specifically provides the right to require the autopsy shall be at the expense of the party requesting the same. There are no provisions as to hearing, procedure, order or other formality, by or before any body, whether judicial or quasi‑judicial. The court is not at liberty to insert such provisions, regardless as to whether it thinks them advisable or inadvisable. The evident intention was for the same to become operative upon request without further formality. Simpkins v. Lumbermens Mut. Cas. Co. (S.C. 1942) 200 S.C. 228, 20 S.E.2d 733.

The filing of a claim or the indication of the filing does not enter into the operation of this section [Code 1962 Section 72‑307]. Simpkins v. Lumbermens Mut. Cas. Co. (S.C. 1942) 200 S.C. 228, 20 S.E.2d 733.

An insurance carrier which is the duly authorized agent and representative of the employer has the authority to request a physical examination of the claimant pursuant to the provisions of this section [Code 1962 Section 72‑307]. Hill v. Skinner (S.C. 1940) 195 S.C. 330, 11 S.E.2d 386. Workers’ Compensation 1310

It is not required to be made at any particular time. Hill v. Skinner (S.C. 1940) 195 S.C. 330, 11 S.E.2d 386.

2. Refusal to submit to examination

Where the facts are disputed and are subject to more than one reasonable inference as to whether the employee is justified in refusing to submit to an examination requested by his employer, the conclusion of the Industrial Commission thereabout is final. But where the circumstances warrant only one reasonable inference, the question becomes one of law rather than of fact and the decision of the Industrial Commission is subject to review. Ward v Dixie Shirt Co. (1953) 223 SC 448, 76 SE2d 605. Singleton v Young Lumber Co. (1960) 236 SC 454, 114 SE2d 837.

Employee was justified in refusing to undergo examination by physician named by employer when three other physicians had examined him and testified in the case, giving different ratings as to his physical impairment, and where employee had fully cooperated with these doctors. Singleton v. Young Lumber Co. (S.C. 1960) 236 S.C. 454, 114 S.E.2d 837.

The facts of the case reasonably warranted the conclusion of the Industrial Commission that claimant was justified in refusing to submit to a spinal myelogram test at the hands of the doctor selected by the employer. Ward v. Dixie Shirt Co. (S.C. 1953) 223 S.C. 448, 76 S.E.2d 605.

When injured employee refuses to submit to further examination requiring a spinal puncture to complete diagnosis of his injury and he offers no credible evidence to justify his refusal, compensation payments should be suspended under the provisions of this section [Code 1962 Section 72‑307] until the examination is permitted. Wardlaw v. J. G. Ridgeway Const. Co. (S.C. 1948) 212 S.C. 116, 46 S.E.2d 662.

Where a claimant refuses to submit to a physical examination upon the request of the duly authorized agent of the employer and the court can find no justification for his refusal to submit to the examination, the mandatory provisions of this section [Code 1962 Section 72‑307] become operative and the claimant is not entitled to compensation for the period which elapsed between the time of his refusal and the time when such refusal ceased. Hill v. Skinner (S.C. 1940) 195 S.C. 330, 11 S.E.2d 386.

Employer that was paying workers’ compensation benefits pursuant to a final order of Workers’ Compensation Commission was not entitled to its requested independent medical evaluation of workers’ compensation claimant given that it chose the doctor who provided a second opinion concerning claimant’s condition; employer could not continue to seek new doctor’s opinions indefinitely until it found favorable opinion. Risinger v. Knight Textiles (S.C.App. 2002) 353 S.C. 69, 577 S.E.2d 222, rehearing denied, certiorari denied. Workers’ Compensation 1313

3. Sufficiency of evidence

Workers’ Compensation Commission’s order providing that the greater weight and preponderance of the evidence supported the finding that the claimant unjustifiably refused to submit to a medical examination requested by employer violated statute governing physical examinations and mandating the exercise of discretion in analyzing the factual scenario in totality; ruling by the Commission was conclusory at best, and there were no factual bases for the statement. Aaron v. Viro Group (S.C.App. 2001) 344 S.C. 321, 543 S.E.2d 574. Workers’ Compensation 1768

**SECTION 42‑15‑90.** Fees of attorneys and physicians and hospital charges approved by commission.

 (A) Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission, but a physician or hospital may not collect a fee from an employer or insurance carrier until the physician or hospital has made the reports required by the commission in connection with the case.

 (B)(1) A person may not:

 (a) receive a fee, gratuity, or other consideration for a service rendered pursuant to this title unless the fee, gratuity, or other consideration is approved by the commission or a court of competent jurisdiction; or

 (b) make it a business to solicit employment for an attorney or himself with respect to a claim or award for compensation under this title.

 (2) A violation of this section constitutes a misdemeanor and, upon conviction, each offense is subject to a fine of not more than five hundred dollars, imprisonment for not more than one year, or both.

 (C)(1) The commission may adopt criteria to establish a new fee schedule or adjust an existing fee schedule to establish maximum allowable payments for medical services provided by medical practitioners exclusive of hospital inpatient services and hospital outpatient services and ambulatory surgery centers based in whole or in part on the requirements of a federally funded program, but if it adopts adjustments to an existing fee schedule, it must adopt these adjustments on an annual basis and the adjustments may not exceed the percentage change indicated by the federally funded program. The commission shall conduct an evidentiary hearing to review a proposed adjustment to increase or reduce these fees by more than ten percent annually to determine whether to:

 (a) increase or reduce the proposed adjustment as the commission considers appropriate; or

 (b) accept the proposed adjustment.

 (2)(a) A decision of the commission to increase or reduce a fee schedule to establish maximum allowable payments for medical services provided by medical practitioners exclusive of hospital inpatient services and hospital outpatient services and ambulatory surgery centers by more than ten percent is reviewable by expedited appeal to the Administrative Law Court pursuant to the Administrative Procedures Act.

 (b) On appeal, the court may:

 (i) accept the increase or decrease;

 (ii) impose a lesser increase or decrease;

 (iii) revert the fee schedule as it was immediately prior to the annual adjustment;

 (iv) adjust the appropriate conversion factors as necessary; or

 (v) make other adjustments the court considers reasonable.

 (c) The court shall issue a decision within ninety days after it receives the appeal.

 (d) During the pendency of this appeal, the portion of the fee schedule under review must remain the same as it was immediately prior to the proposed changes, but all other portions of the fee schedule or conversion factors are effective and remain unchanged.

HISTORY: 1962 Code Section 72‑19; 1952 Code Section 72‑19; 1942 Code Section 7035‑67; 1936 (39) 1231; 1980 Act No. 318, Section 3; 2012 Act No. 183, Section 1, eff June 7, 2012.

CROSS REFERENCES

Hearings and proceedings, see Section 1‑23‑600.

Requirements for promulgation of policies or procedures implementing this section, see Section 42‑3‑185.

Library References

Workers’ Compensation 973, 990, 991.5, 1002, 2080.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 544 to 545, 548 to 551, 562, 566 to 567, 574, 1711 to 1715.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 321:9, Attorneys Fees.

Attorney General’s Opinions

Although a contrary interpretation may be argued, it is doubtful that Section 42‑15‑90 may be construed as presently authorizing approval by the Industrial Commission of employers’ or carriers’ attorneys fees. However, should the General Assembly desire, for public policy reasons, to encompass the supervision of defense fees within the scope of Section 42‑15‑90, a statute expressly authorizing such is recommended. Assuming that Section 42‑15‑90 may be construed as authorizing approval by the Industrial Commission of employers’ or carriers’ attorneys fees, such approval must be made by the exercise of quasi‑judicial discretion, rather than a ministerial act. Moreover, and again assuming that Section 42‑15‑90 authorizes approval of defense fees, pursuant to the express mandate of Section 42‑3‑185 the Industrial Commission would be required to submit to the General Assembly for review any policy or procedures related to the approval of defense attorneys fees in compensation cases. 1986 Op.Atty.Gen., No. 86‑60, p 185, 1986 WL 192020.

While South Carolina law may require Workers’ Compensation Commission’s approval for physicians’ fees for covered service, the law of the locale where the contract is entered and where the professional services are provided would likely be controlling. Further, it is doubtful that the prevailing medical rate in South Carolina can be used to review out‑of‑state physician fees for medical services. 1986 Op.Atty.Gen., No. 86‑107, p 325, 1986 WL 192065.

NOTES OF DECISIONS

In general 1

1. In general

Workers’ Compensation Commission does not have jurisdiction over fee disputes relating to fees charged by an out‑of‑state medical provider for services performed outside South Carolina relating to an injury occurring in South Carolina; the statutorily created process for resolving fee disputes between a workers’ compensation insurer and a medical provider does not apply to an out‑of‑state medical provider that performs medical services outside of state relating to a workplace injury occurring in state. Doctors Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers’ Compensation Trust Fund (S.C. 2006) 371 S.C. 5, 636 S.E.2d 862. Workers’ Compensation 993

Actions by the Workers’ Compensation Commission to require the submission and approval of attorney’s fees prior to the effective date of a regulation authorizing the Commission to do so exceeded the Commission’s authority and thus were void. Bazzle v. Huff (S.C. 1995) 319 S.C. 443, 462 S.E.2d 273. Workers’ Compensation 1092

This section [Code 1962 Section 72‑19] does not authorize lay representation in hearings before the Commission. State ex rel. Daniel v. Wells (S.C. 1939) 191 S.C. 468, 5 S.E.2d 181.

**SECTION 42‑15‑95.** Release of medical records; communication of medical history by health care provider.

 (A) Any employee who seeks treatment for any injury, disease, or condition for which compensation is sought under the provisions of this title shall be considered to have given his consent for the release of medical records relating to such examination or treatment under any applicable law or regulation. All information compiled by a health care facility, as defined in Section 44‑7‑130, or a health care provider licensed pursuant to Title 40 pertaining directly to a workers’ compensation claim must be provided to the insurance carrier, the employer, the employee, their respective attorneys or certified rehabilitation professionals, or the South Carolina Workers’ Compensation Commission, within fourteen days after receipt of written request. A health care facility and a health care provider may charge a fee for the search and duplication of a medical record in accordance with regulations promulgated by the Workers’ Compensation Commission. Fee schedules established through regulations of the Workers’ Compensation Commission shall apply only to claims under Title 42. If a health care provider fails to send the requested information within thirty days after receipt of the request, the person or entity making the request may apply to the commission for an appropriate penalty payable to the commission, not to exceed two hundred dollars.

 (B) A health care provider who provides examination or treatment for any injury, disease, or condition for which compensation is sought under the provisions of this title may discuss or communicate an employee’s medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments with the insurance carrier, employer, their respective attorneys or certified rehabilitation professionals, or the commission without the employee’s consent. The employee must be:

 (1) notified by the employer, carrier, or its representative requesting the discussion or communication with the health care provider in a timely fashion, in writing or orally, of the discussion or communication and may attend and participate. This notification must occur prior to the actual discussion or communication if the health care provider knows the discussion or communication will occur in the near future;

 (2) advised by the employer, carrier, or its representative requesting the discussion or communication with the health care provider of the nature of the discussion or communication prior to the discussion or communication; and

 (3) provided with a copy of the written questions at the same time the questions are submitted to the health care provider. The employee also must be provided with a copy of the response by the health care provider.

 Any discussion or communication must not conflict with or interfere with the employee’s examination or treatment.

 Any discussions, communications, medical reports, or opinions obtained in accordance with this section will not constitute a breach of the physician’s duty of confidentiality.

 (C) Any discussions, communications, medical reports, or opinions obtained in violation of this section must be excluded from any proceedings under the provisions of this title.

HISTORY: 1980 Act No. 318, Section 1; 1989 Act No. 186, Section 1, eff June 8, 1989; 1990 Act No. 476, Section 1, eff May 14, 1990; 1994 Act No. 468, Section 5, eff July 14, 1994; 2007 Act No. 111, Pt I, Section 29, eff July 1, 2007, applicable to injuries that occur on or after that date.

CROSS REFERENCES

Communication between parties and health care providers, see S.C. Code of Regulations R. 67‑1308.

Rehabilitation professionals, see S.C. Code of Regulations R. 67‑1307.

Library References

Workers’ Compensation 1305, 1686.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 993, 995 to 996, 998 to 999, 1001, 1161.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 304:6, Other Medical Reports or Records.

Attorney General’s Opinions

It does not necessarily appear that this section is contrary to federal regulations or that it stands as an obstacle to federal laws in the field of access to health information, thus, this section may not be preempted by 45 CFR Section 164.524(c)(4). S.C. Op.Atty.Gen. (Nov. 7, 2002) 2002 WL 31728838.

The state Industrial Commission is without authority to obtain patient records directly from the Department of Mental Health unless one of the exceptions to Section 44‑23‑1090 applies; however, the Commission may subpoena a compensation claimant to produce his medical records. 1989 Op.Atty.Gen., No. 89‑48, p 124, 1989 WL 406138.

NOTES OF DECISIONS

In general 1

1. In general

Provision of Workers’ Compensation Act governing disclosure to employer of employee’s existing written records and documentary materials did not authorize other ex parte methods of communication between employer, or its representatives, and employee’s health care provider, and thus, employee’s attorney was entitled to direct employee’s treating physicians not to discuss employee’s condition with rehabilitation nurse hired by employer to determine whether injuries for which employee sought treatment were compensable. Brown v. Bi‑Lo, Inc. (S.C. 2003) 354 S.C. 436, 581 S.E.2d 836, rehearing denied. Workers’ Compensation 1686

Employer’s representatives were entitled to contact workers’ compensation claimant’s treating physicians directly to determine such issues as diagnosis, damages, and impairment relevant to claim; requiring employers to use formal discovery methods, such as depositions, motions, and interrogatories, would significantly delay the process and increase the costs of coverage, which would run counter to the Workers’ Compensation Act’s policy of ensuring swift compensation. Brown v. Bi‑Lo, Inc. (S.C.App. 2000) 341 S.C. 611, 535 S.E.2d 445, rehearing denied, certiorari granted, certiorari granted, reversed 354 S.C. 436, 581 S.E.2d 836. Workers’ Compensation 1305

A physician does not breach his or her duty of confidentiality by providing medical information relevant to an employee’s claim to an employer or its representative in workers’ compensation cases because the law compels a physician to do so. Brown v. Bi‑Lo, Inc. (S.C.App. 2000) 341 S.C. 611, 535 S.E.2d 445, rehearing denied, certiorari granted, certiorari granted, reversed 354 S.C. 436, 581 S.E.2d 836. Workers’ Compensation 1305