Hearing and Deciding Disputed Workmen's Compensation Cases

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South Carolina Industrial Commission

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The South Carolina Industrial Commission exercises ministerial and quasi-judicial powers in administering the Workmen's Compensation Act. The Commission is empowered to find the facts, make conclusions of law, and render decisions in disputed cases after hearing the parties and their witnesses. Most of the Commission's decisions turn on findings of fact which are not reviewable by the courts, and this is an exercise of tremendous power, with great social and economic consequences.

As an administrative tribunal, the Industrial Commission is empowered to conduct hearings in a summary manner. What comprises a summary manner is not spelled out by the Act nor court decisions. The court has simply stated that the Industrial Commission has broad powers of discretion in all procedural matters. Nevertheless, there are definite limits upon these powers of discretion. The old legal truism, "Substantive rights are never greater than procedural rights", applies equally to workmen's compensation as any of the older areas of the law; and as such, compels a hearing commissioner to observe the rule which remains constant, that he be fair and reasonable in receiving and evaluating evidence.

Relaxation of common law rules of evidence for purposes of workmen's compensation hearings by statutory command that hearings be conducted in a summary manner has given rise to some loose concepts of procedural rights and evidentiary values. The constitutional rights of parties to due process

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2. Code of Laws of South Carolina, § 72-354 (1952): The Commission or any of its members shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law and other matters pertinent to the questions at issue, shall be filed with the record of the proceedings and a copy of the award shall immediately be sent to the parties in dispute.
must always be observed. Each party is entitled to proper notice of issues to be tried and to a fair and impartial hearing, and to have its evidence received and evaluated in a fair and reasonable manner. But what stands as a standard of “fair and reasonable”? The common law principles of evidence or something less? Nothing is to be found in any decision of our court or courts of other jurisdictions in this country that any standard differing with common law principles of evidence may be employed by administrative tribunals. Our courts have said that the niceties of pleading and process in law courts cannot be required of the Industrial Commission without violating the spirit and philosophy of workmen’s compensation. This does not mean that any information offered could be accepted and relied upon as legal evidence, nor, that the Commission should not attempt to keep the testimony material and relevant to the issues. It does mean that the Industrial Commission would not be held to the responsibility of the judge who, as with a surgeon’s knife, must carefully separate the wheat from the chaff in deciding what is legal evidence. The most notable relaxation allowed by our court in common law principles of evidence in matters before the Industrial Commission, has been to allow as admissible certain hearsay evidence. But even this certain hearsay evidence is required to be corroborated by some other evidence in order to take on probative value. Our court has stated that it is not reversible error for the Commission to receive as evidence that which is incompetent and prohibited by common law principles of evidence when such so-called evidence is harmless, not prejudicial to either party, and not relied upon in the determination. It is clear that although the Industrial Commission may open wide its gates for receiving evidence,

it is still held accountable to base its findings and decisions upon reliable and competent evidence pertaining to the standards of legal evidence, established as common law rules of evidence.10

In evaluating evidence, we cannot say that legal, common law evidence under every circumstance is of a higher quality or had more probative value than evidence which would be excluded or inadmissible under the common law. Regardless of its legality, evidence is either of good or inferior quality with gradations in between.

There has never been any scientific or even pseudo-scientific formula by which evidence could be evaluated. There have only been certain established aids, such as the hearsay evidence rule, and other exclusionary rules which have evolved in the common law and in our civil procedural statutes. Most common law and statutory rules of evidence were devised in order to assist juries in making their determinations. Instead of allowing the juror to assess the weight of hearsay hit or miss, the law merely excluded it. On the other hand, there are as many exceptions to the hearsay rule as there are applications of it. In many instances, legal evidence may be the only desirable basis for deciding the issues because of the inferior quality of all of the rest of the evidence presented.

Experience and time have shown us that legal or common law evidence has been most consistently of a higher quality than inadmissible evidence, but not that it has been exclusively of a higher quality. Hearsay evidence may more often than not be inferior to direct evidence,

but where no other type of evidence is available, and the testimony is presented by a witness whose veracity is convincing, and the sum total of the evidence is 'the kind of evidence on which responsible persons are accustomed to rely in serious affairs', it has great probative weight. The problem confronting the referee is one of selection of quality, rather than the lawyer-like job of merely adding up admissible evidence and subtracting the legally exclusionary evidence. Simply stated, his job is to be reasonable and fair.

There may have been an impression that since the Workmen's Compensation law permits freedom of procedure and a relaxation of legal rules of evidence, and since the law contains seemingly sweeping presumptions, that the board and its referees must accept all evidence presented as well as the inference drawn from such evidence as being probative and worthy of belief. Of course, this is not true. The referee is merely in a more difficult position than a jury or judge, because out of a morass of both high quality and inferior quality evidence, he must separate the wheat from chaff, deciding the issues on substantially supportable evidence.11

In hearing cases, the Industrial Commission has the duty to follow the legislative mandate to make applicable the remedies of the Workmen's Compensation Act wherever possible by construing the law broadly and in manner most favorable to claimants. and to do this short of violence to the plain meaning of the Act.12

There is a distinct difference between construing the Workmen's Compensation Act, the law that is, in a liberal manner and the correct fashion for evaluating evidence.13 Evidence is simply a search for truth. Of necessity, we settle at times on that which best represents the probable truth. The moving party always has the burden of establishing by competent evidence facts sufficient to support an award arrived at by a liberal application of the law, and the final findings of determinative facts must rest upon the preponderance of the evidence related thereto as a predicate for any award. As

to these findings, there is no presumption of compensability favoring a claimant. Moreover, in certain classes of cases, there is a presumption against compensability.15

Evidence is to be received and evaluated in a fair and reasonable manner. Findings must be based upon a conviction which the trier of the facts derives from the preponderance of competent evidence. This is a search for truth under rules of fair play and has nothing to do with any notion of whether a hearing officer is a liberal, a conservative, or fits any other word description of personality or human weakness.

Methods of evaluating evidence cannot be spelled out in neat mathematical terms nor precise standards of logic. Evaluating evidence requires a mind sensitive to and bent upon doing what is right and what is just; and in the process committed, insofar as human nature permits, to being objective, dispassionate and very careful in using the tools at hand for discernment of that information which is worthy of belief and that which represents the weight of the evidence. Evaluating evidence requires the trier of the facts to be well informed, not "half-baked" in his ideas or notions, nor overcome by the prestige, articulation or erudition of any party or his witnesses or his lawyer. In short, a good trier of facts will question and test everything presented to him as representative of a fact, or test any expert opinion given in lieu of a fact by standards of high ethics and intelligence; and with a spirit of humility be firm of purpose in deciding the rights and remedies of the parties before him for judgment.

Being the judge and the jury assumes fearful responsibilities. Acting as both the judge and the jury increases the awesome fear of failing to be right and to be just. Judge Newton D. Baker said many years ago, in referring to his responsibilities as a federal judge, that his only fear was that in some moment of human weakness or abstraction, he would make a decision doing an injustice to one of the parties, and that this fear drove him to burn the midnight oil in studying the facts and the law applicable thereto in all of his cases.

This fear becomes the guardian Hermes of the decision maker's responsibility to be fair and impartial; to do what is

right and just; to rise above self and strive to be as "blind justice", dispassionate and objective; and to utilize fully the lessons of experience and sound reasoning in passing upon the rights of parties in accordance with law.

Recently, our court stated that;

The duty to determine the factual issues is placed solely on the Commission, and neither this Court, nor the circuit court, has authority to determine factual issues, except in jurisdiction matters. This duty on the part of the Commission requires that, not only must findings of fact be made upon the essential factual issues, but that they be sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings. 58 Am. Jur. 878, Section 472. And 'where there is a noncompliance by a compensation tribunal with the requirement of express findings and the cause remanded to the tribunal, in order that it may conform to the requirement, either with or without a new hearing of the parties, as the exigencies of a case may be.' 58 Am. Jur. 379, Section 476. Annotation: 146 A.L.R. 123, 197.

We have followed the foregoing rule in cases where there was a failure to make findings of fact by the Commission or the findings made were lacking in sufficient definiteness. Gray v. Laurens Mills, et al., 231 S.C. 488, 99 S.E.2d 36 (1957); Harpe v. Kline Iron & Metal Works, et al., 219 S.C. 527, 66 S.E.2d 30 (1951); Dameron v. Spartan Mills, et al., 211 S.C. 217, 44 S.E.2d 465 (1947); Shillinglaw v. Springs Cotton Mills, et al., 209 S.C. 379, 40 S.E.2d 502 (1946). In the Gray case, it was stated that 'the Commission should make such specific and definite findings upon the evidence reported as will enable this Court to determine whether the general finding or conclusion shall stand, particularly when there are material facts at issue.'

Administrative tribunals exist not solely as a result of much regulatory and social legislation at the state and federal

levels, but because it was believed that these tribunals would be made up of men and women who would become experts as triers of the facts, efficient and expeditious in their inquiries and decision making, and would not be misled into error in relying upon unreliable and incompetent evidence; and that with a growing training and experience that the ideas of efficiency, speed, and fair play, would become, for administrative tribunals, more and more a strong and stable standard for fact finding and decision making.

The Workmen’s Compensation Act, and the decisions of our court, command the Industrial Commission to make clear, specific, and comprehensive findings as to all issues in question. It seems, as an aid to this end, that a ready reference format and check-list was needed by a trier of the facts and by the practitioner who has the responsibility of building the record upon which the trier of the facts must decide. Accepting the awareness of this need, an attempt has been made to draft such a format and outline check-list of aspects which are usually present as an issue in all workmen’s compensation cases. This format and check-list is designed primarily as a work sheet. It presents alternative facts for selection as they may appear in a given case, allowing for extension of either finding when required. It also presents a systematic outline with continuity of matters which usually are in dispute and concerning which a finding of fact and conclusion of law must be made. Since it is now clear that not to make specific findings on all issues is reversible error, causing remand for further procedure, such a format and check-list is highly desirable so that a report of a case with decision will be complete. Moreover, it seems desirable that words and phrases used for expressing findings on issues which are common should be concise and uniform from case to case. Thus, a language peculiar but concisely fitting for answering factual and legal problems which arise under the Act and for orders of determination free of vagueness and ambiguity is recommended. This would promote better understanding among members of the bar of what has been decided. For these reasons, this format has been developed with hope that it will prove of some assistance to those of us who labor in this field of law.
WORK SHEET
FOR
DECISION AND ORDER
OF THE
SOUTH CAROLINA INDUSTRIAL COMMISSION
DOCKET NO. _____________

* * * * * * * * * *

________________________________, DECEASED EMPLOYEE

________________________________, CLAIMANT(S)

______________________________, AND

______________________________, DEFENDANT(S)

HEARING(S):
Held _____________, 19 ___ at _____________

APPEARANCES:
Last Reference Filed _____________, 19 ___
Claimant(s) represented by _____________

Attorney(s) at Law, _____________
South Carolina, with Mr. _____________ appearing.

Defendant(s) represented by _____________

Attorney(s) at Law, _____________
South Carolina, with Mr. _____________ appearing.

SUBJECT OF HEARING:
To determine _____________

DECISION AND ORDER:
By _____________, Commissioner.
FILED: _____________, 19 ___

* * * * * * * * * * * * * *

This case was heard by the undersigned Commissioner _____________,
19 ___, at _____________,

with last reference filed _____________, 19 ___.

The claimant(s) _____________

(hereinafter called the employee) (is) (are) claiming medical benefits and
(death) compensation for (total) (partial) (specific) (general) disability
and serious (bodily) (facial or head) disfigurement based upon alleged
covered "injury" ("death") occurring _____________, 19 ___ _____________

______________________________

______________________________
under the South Carolina Workmen's Compensation Act. Code of Laws of South Carolina, 1952, Title 72. The defendant(s) (admitted) (denied) liability (and) (but) contended that ____________________________

Synopsis of Evidence: ____________________________________________

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_______________________________________________________________

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The question(s) to be decided (is) (are): ______________________________

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Reasons for Decision: ______________________________________________

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A record as is necessary for decision was made at the hearing(s), and is duly recorded, and with the filing of deposition(s) and stipulation(s), with last reference filed ________________, 19 ____, the case was closed.

After due consideration of the claim and the defenses thereto, and based upon all the evidence are the following:

FINDINGS OF FACT

1. That the parties are subject to and bound by the South Carolina Workmen's Compensation Act as amended; that on and about ____________, 19 ____, the employee (was) (was not) employed by ___________________________

(employer)
SOUTH CAROLINA LAW QUARTERLY, which was operating under the
Act at that time (as a self-insurer) with ________________ (carrier)
as its insurance carrier.

2. That the employee, while employed as a ________________ (occupation)
for the employer on or about __________, 19__, (was) (was not) engaged in
__________________________
(Work alleged)

and while so engaged (did) (did not) ________________________________
(incident alleged)

and the employee as a result of this incident (did) (did not) suffer bodily
injury (disease) consisting of ____________________________
(part of body injured)

3. That the pre-injury average weekly wage was $__________, and the
weekly compensation rate is $__________, (which is the maximum
allowed by the Act.)

4. That the employee as a result of the injury of ________________,
19__ (has) (has not) been disabled (as follows:)
A. Total disability ________________, 19__, to ________________,
19__; _______________________________
(for the period of ____ weeks); and
B. Partial loss of wage earning capacity (disability) in the
amount of $_________ per week for the period of ________________,
19__ to ________________, 19__; ________ weeks; and
C. Total disability (Partial disability of $_________ per week loss of wage earning capacity) continuing on
__________________________, 19__, and is such that it will
(date of last hearing) continue indefinitely thereafter.

5. That the employee has received (all) (compensation due and payable
to ________________, 19__) (_________ disability compensation due and
payable for the period(s) of ________________, 19__ to ________________,
19__; and ________________________________
(and compensation payments were stopped upon application duly made and
by Order of the Industrial Commission issued on ________________, 19__)

6. That the employee's injury required medical examination and treat-
ment for relief (for cure); and that after ten (10) weeks following the
injury, the employee continued to have disability as follows:
A. Total (Partial) disability ________________, 19__ to ________________
19__; and ________________________________
B. Specific loss (disability) of the (member of body)
which (had not) (did not) reach(ed) maximum of healing
(on) (until) ________________, 19__; and

C. That the injury after the first ten (10) weeks required
medical treatment, and the treatment was (and is) such as
would tend to restore the employee's physical function, and
that such physical restoration was (and is) such as would
tend to decrease the employee's period of disability.

7. That the employee reached maximum of healing of the injury on
______________________, 19__.

8. That the employee as a result of the injury has specific loss as
follows:
   A. ______% loss of ____________________________
      (member of body)

9. That the employee as a result of the injury has a serious (bodily)
(head and facial) disfigurement which includes ____________________________
   (scars, gaits, or
   postural defects, loss of organ or member of body)

10. That the employee died _______________________, 19__, and the death
(resulted) (did not result) proximately from ____________________________
   (incident and injury)

   which occurred while the employee (was) (was not) engaged in
   ____________________________
   (work alleged)
   on ________________________, 19__

11. That the employee left as (his) (her) only surviving whole depen-
dent(s) the following:

12. That the employee left no surviving dependents, and (his) (her)
next of kin are as follows:

13. That the ______________________ (funeral home)
of ______________________ conducted the burial of the deceased employee, and
(city)
the charges therefor in the amount of $___________ (have) (have not)
been paid (by ______________________)

14. That the employee (did) (did not) sustain a hernia resulting from
injury by accident on _______________________, 19__, arising out of and in the
course of the employment in:
that the accident (was) (was not) accompanied by pain, and that there (was) (was not) an injury resulting in a hernia, and that the hernia (did) (did not) immediately follow an accident, and that the hernia (did) (did not) appear suddenly, and that the hernia (did) (did not) exist prior to the accident.

15. That the claim for compensation (was) (was not) filed within one (1) year after the accident of ____________, 19__, and the defendant(s) (is) (are) estopped to deny that the claim was timely filed due to___________.

16. That the employee (did) (did not) give timely written notice of the accident and the ____________ injury to the employer; (that the Nature of the injury) employer had knowledge of the accident by oral report given by the employee to the supervisor (__________) on or before ____________, (Agent) 19__; and the employee (did have) (did not have) reasonable excuse for not giving such timely written notice due to reasonable excuse of___________.

and the employer (has) (has not) been prejudiced thereby due to___________.

17. That the employee (did) (did not) undergo a change of physical condition for the (worse) (better) on or about ____________, 19__, in the following manner: ____________;

and as a result thereof (is) (is not) in need of medical treatment (See Finding #6,) and has been disabled as follows: ____________.

18. ____________

Upon the foregoing Findings of Fact and under the Code of Laws of South Carolina, 1952, Title 72 are the following:

CONCLUSIONS OF LAW

1. According to Section 72-14, the employee (did) (did not) sustain an injury by accident arising out of and in the course of the employment on ____________, 19__.
2. According to Section 72-10, the employee (did) (did not) sustain "disability" within the meaning of (that) (those) statutes(s).

3. (Any other definition sections as needed)

____________________________________________________________

____________________________________________________________

4. According to Section 72-301 and Section 72-302, the employer (did) (did not) receive timely written notice of the employee's accident. (and the employee (was) (was not) relieved of giving the required written notice because (the employer (did have) (did not have) knowledge of the accident and injury within thirty (30) days therefrom); (the employee (did) (did not) establish reasonable excuse for not giving timely written notice); (and the employee (did) (did not) establish that the employer (was) (was not) prejudiced due to the untimely written notice.)

5. According to Section 72-303, the employee's claim for compensation (is) (is not) properly within the jurisdiction of the Industrial Commission for determination on the merits.

6. According to Section 72-305, the employee is entitled to the medical care as specified therein for the period from the time of accidental injury to ____________19___. (and thereafter as long as medical care will tend to reduce the period of disability.)

7. According to Section 72-151, which governs compensation for total disability, the employee is entitled to weekly compensation at the rate of sixty (60%) percent of the pre-injury average weekly wage during total disability, not to exceed the weekly maximum of $35.00, nor the other maximum provisions of Title 72 (less the waiting period of seven (7) days under Section 72-171.)

8. According to Section 72-152, which governs compensation for partial disability, the employee is entitled to weekly compensation at the rate of sixty (60%) percent of the decreased wage earning capacity during such disability, not to exceed the weekly maximum of $35.00, nor the other maximum provisions in Title 72.

9. According to Section 72-153 ( ) and ( ), the employee for the specific loss of ___% of the __________________________ (member of the body) is entitled to compensation at the weekly rate of $____________ from ____________19___ for ________ weeks.

10. According to Section 72-153 (18), the employee for the serious (bodily) (head and facial) disfigurement is entitled to reasonable compensation payable in a lump sum.

11. According to Section 72-14 and Section 72-180, the employee's death is compensable, and the claimant(s) ____________________________ (is) (are) entitled on account of the death of the employee to compensation at the weekly rate of $_______ from ____________19___.
for a period of three hundred and fifty (350) weeks, not to exceed $10,000.00, including $400.00 burial allowance as specified in Section 72-160. (and the claimants are each to share the weekly compensation equally and alike).

12. According to Section 72-359, the Industrial Commission (does) (does not) have jurisdiction to review the claim on the merits.

13. According to Section 72-154, the hernia claim (is) (is not) compensable.

ORDER

A. IT IS ORDERED that the claim of the (employee) (claimant(s)

be, and it hereby is, denied, and the case is dismissed.

B. IT IS ORDERED that the defendant(s) pay to the (employee) (claimant(s)

compensation as follows:

(1) total disability compensation at the weekly rate of $______
    for (the period from ________, 19___ to ________, 19___) (_______ weeks); and
(2) total disability compensation at the weekly rate of $______
    from ________, 19___ to continue until such time as
    (date of last hearing)
    the employee, _______________, returns to gainful
    employment or until it is found by the South Carolina
    Industrial Commission that total disability has ceased,
    not to exceed the maximum provisions of the South
    Carolina Workmen's Compensation Act.
(3) partial disability compensation at the weekly rate of
    $______ for (the period from ________, 19___ to
    ________, 19___) (_______ weeks); and
(4) specific disability compensation at the weekly rate of
    $______ from ________, 19___ for the period of ___
    weeks for ____ percent specific loss of the __________;
    and
(5) serious (bodily) (facial and head) disfigurement compensa-
    tion in the amount of $________ payable in a lump
    sum.
(6) death compensation at the weekly rate of $________
    from ________________, 19___ for the period of three
    hundred and fifty (350) weeks, not to exceed Ten Thousand
    and no/100 ($10,000.00) Dollars, including Four Hundred
    and no/100 ($400.00) Dollars burial allowance, which shall
    be paid to ____________________________

__________________________________

__________________________________
(and the claimants are each to share the weekly compensation equally and alike.) (and the compensation to the minor(s) shall be paid through a general guardian.)

(7) death compensation in the commuted amount of $_______ less $________ for burial expenses which shall be paid to

(and the claimants each shall share the weekly compensation equally and alike.) (and the compensation to the minor(s) shall be paid through a general guardian.)

G. IT IS ORDERED that the defendant(s) pay for the medical care and treatment of the injured employee ______________ as follows:

(1) all medical charges incurred for examination and treatment of the employee's ____________________________

(type of injury or disease, back, hernia, et cetera)

injury from the date of the injury __________, 19__ to

________________________, 19__ and

(2) thereafter to furnish medical care and treatment for the injury until such time as the employee reaches full recovery, or until it is found by the South Carolina Industrial Commission that medical treatment will no longer tend to lessen the employee's period of disability, which results from the injury.

SOUTH CAROLINA INDUSTRIAL COMMISSION

________________________________________

, Commissioner

Composed (October 1, 1959)
Revised (August 5, 1961)
by
JAMES J. REID