

Chapter 13

LUMP SUM PAYMENTS

§ 13.01 Lump Sum Statute.

§ 13.02 Lump Sum Regulation.

§ 13.03 Lump Sum Proof.

§13.01 Lump Sum Statute.

Section 42-9-301 provides that at least six weeks of benefits must have been paid before a lump sum can be granted. The commission must decide that the lump sum is not to be contrary to the best interest of the employee. A lump sum payment may not be less than ninety percent of the commuted value.

In obvious cases of total disability, where the claimant has already received six weeks of temporary total compensation, the claimant can file both a Form 50 and Form 24 (Application for Lump Sum) and have the issues of total disability and entitlement to a lump sum heard at the same time.

Commuted value (discount rate) charts are set by, and available from, the commission. See Appendix 13.

On appeal, the carrier has the burden of proving that the commission abused its discretion in ordering a lump sum.

The commission may not order a total lump sum in cases when the claimant is entitled to lifetime benefits. Section 42-9-10. Paradoxically, there is nothing to prohibit the commission approving a clincher of such a case.

See section 42-9-310 regarding payment of lump sum to a trustee.

§ 13.02 Lump Sum Regulation.

Under regulation 67-1605, awards of less than one hundred weeks shall be automatically paid by the carrier in a lump sum. Awards of more than 100 weeks are paid in lump sums only if ordered by the hearing commissioner or ordered by the commission upon request of the claimant. The claimant's attorney must first ask the carrier to pay a lump sum voluntarily.

If the carrier agrees to payment of a lump sum, a Form 24 should be completed along with a stipulation verifying that the parties agree to the lump sum. The original hearing commissioner will either approve the Form 24 or set the matter for a hearing.

If the carrier objects to the lump sum, a Form 24 should be filed with a letter stating that the carrier does not consent. The case will then be set for a hearing. Carriers and defense lawyers will frequently refuse to send a letter stating they do not consent. In such a case, send them a letter giving them a deadline to respond, beyond which it will be assumed that they do not consent. Then attach this letter and an affidavit confirming that they did not respond to the Form 24.

Upon request, the commission will calculate the commuted value of the future benefits and send this information to both parties. For computations of lump sum benefits in death cases, see regulation 67-1606. See also section 42-9-290.

§ 13.03 Lump Sum Proof.

In Cox v. Jackson Mills, 286 S.C. 226, 332 S.E.2d 562 (S.C. App. 1985), the claimant was awarded a lump sum based in part on proof that a lump sum could be used to do major home repairs that would have been more costly if done later. The claimant demonstrated the ability to handle funds. The carrier's only defense was the desire and need for investment income. The court affirmed.

Testimony in support of the application for a lump sum payment may include: (1) testimony regarding the claimant's ability to handle such funds; (2) testimony regarding the overall family financial picture; (3) testimony regarding how the claimant will use and/or invest the lump sum. See Appendix 13. In certain cases it might be appropriate to offer testimony or an

affidavit from an accountant regarding the claimant's financial situation and the financial advantages of receiving a lump sum.

If the claimant has kept good financial records, it is advisable to have him bring them to the hearing so that the commissioner may review them.

If the insurance carrier suggests that the lump sum is not in the best interests of the claimant, point out that the carrier previously offered to clincher the case (as they invariably do). The proposed clincher frequently will have been greater than the lump sum award. Why was the proposed clincher in the claimant's best interest but not a lump sum?