Chapter 7
STOP PAYMENT

§ 7.01 The Stop Payment Statute and Regulations.

Termination of temporary total compensation is governed by section 42-9-260 and regulations 67-502, et. seq. In 1996, the legislature amended the Workers' Compensation Act, creating two separate stop-payment procedures. Ostensibly, H.3838 was enacted to eliminate the loophole that allowed employers to "opt out" of the Workers' Compensation Act. The legislation was also supposedly in response to industry and insurance requests for an easier stop-payment process to allow employers to end temporary total benefits in cases of alleged "fraud." In reality, the new version of South Carolina Code Ann. § 42-9-260 and the new commission regulations 67-502 through 67-506 have created two methods of stopping payment, depending on whether 150 days have passed following notice by the employee of the accident.

§ 7.02 Stopping Payment Within 150 Days.

Section 42-9-260(a) provides that employers may start and continue temporary total for up to 150 days following notice of the accident, without waiving any grounds for a "good faith denial" of benefits. Please note that the 150 days begin to run upon notice of the injury to the employer - not upon commencement of temporary total benefits. Section (a) provides that after an employee has been out of work for eight days, the employer may start temporary total benefits immediately and may continue those payments for up to 150 days from the date the injury is reported without waiver of any grounds for good faith denial.

Previously, it had been held that once an employer started paying temporary total benefits, the parties signed a Form 15, and a perfunctory order was issued by the commission, the claim was deem to have been admitted. See McCreery v. Covenant Presbyterian Church, supra. Whether payment of a claim under the current system can be construed as an admission of any kind is debatable. However, it can be argued that the claim is admitted if the carrier does not assert a basis for denying the claim within the first 150 days.

The revised statute allows an employer to initiate payment of temporary total benefits after an employee has missed eight days due to a reported work related injury or occupational disease. Now, an employer may stop or suspend payment of temporary benefits within 150 days after the injury is reported, without a hearing, if one of the following six events occurs:

1. The employee has returned to work; however, if the employee does not remain at work for a minimum of 15 days, the temporary disability payments must be resumed immediately;
2. The employee agrees that he or she is able to return to work and executes the proper Commission form;
3. A good faith investigation by the employer reveals grounds for denial of the claim;
4. The employee has been released by the treating physician to work without restrictions and the employer offers comparable employment;
5. The employee has been released by the treating physician to limited duty work, and the employer provides limited duty work consistent with the terms upon which the employee has been released; or
6. The employee refuses medical treatment or refuses an examination or evaluation. Elimination or suspension of benefits may continue until the refusal ceases or the Commission determines the refusal to be justified.

Section 42-9-260(c) provides that an employee whose benefits have been terminated or suspended may request a hearing to have the payments reinstated. The commission must provide the claimant a hearing within 60 days of the date of the employee's request for the hearing.

Section 42-9-260 (d) allows the employer to request the hearing if an employee has reached maximum medical improvement (MMI). That hearing, likewise, must be provided within 60 days of the date of the employer's request. Section (e) allows an employer to request a hearing at any time to address termination or reduction of temporary disability payments.

§ 7.03 Stopping Payment After 150 Days.

The procedure for stopping payment of temporary total after 150 days is basically the same as the stop-payment procedure in effect prior to the amendment of section 42-9-260 and the commission's regulations. Stop-payment procedures after the first 150 days are discussed in sections 42-9-260(F) and regulations 67-505 and 67-506. Section 42-9-260(F) provides that "after the one hundred fifty day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension...". Most importantly, section (F) provides that "the commission may not entertain any application to terminate or suspend benefits unless and until the employer or carrier is current with all payments due." Section 42-9-260(G) slightly amends the penalty provisions to provide a 25% penalty to be paid to the employee in addition to the amount of benefits withheld in the event of failure to comply with this section by the employer or carrier. However, the penalty does not apply if the employer or carrier has terminated or suspended benefits because the employee has returned to any employment at the same or similar wage.

Unless the employee has actually returned to work or agreed that he or she is able to return to work and executes the proper commission form, a hearing must be held before benefits can be stopped. A fifteen day trial work period is allowed. However, if the employee is not able to continue to work, reinstatement of benefits is not automatic. The claimant must request a hearing for reinstatement. Regulation 67-506 provides that the commission cannot entertain any application to terminate or suspend benefits unless the employer or carrier is current with all payments due. When an employer attempts to terminate benefits after 150 days and is not current with all payments due, the claimant's attorney must ask not only that the benefits continue, but that the employer be assessed a 25% penalty in compliance with section (G). In theory, this would apply to mileage and drug reimbursement as well, as they are "payments due"; however, in practice, fairly egregious violations by defendants are often necessary to result in the 25% penalty provided in section (G).

§ 7.04 Stop Payment Strategy.

Claimants' attorneys should emphasize at stop-payment hearings that the employer/carrier must strictly comply with the requirements of section 42-9-260 as a condition precedent for terminating benefits. A fundamental tenet of the Workers' Compensation Act is that the statute is to be liberally construed in favor of benefits to the injured worker. There are a number of cases holding that the Act shall be liberally construed in favor of benefits to the injured worker, and conversely, there must be strict compliance with the statutory and regulatory provisions by employers/carriers who are attempting to deny benefits: "Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents; and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted and to avoid any incongruous or harsh results." Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941); Marshbanks v. Duke Power Co., 190 S.C. 336. 2 S.E.2d 825 (1938); Phillips v. DixieStores, Inc., 186 S.C. 374, 195 S.E.2d 646 (1938); Kennerly v. Ocmulgee Lumber Co., 206 S.C. 481, 34 S.E.2d 792 (1945); Baldwin v. Pepsi-Cola Bottling Co., 234 S.C. 320, 108 S.E.2d 509 (1959); Carver v. Bill Pridemore and Co., 278 S.C. 235, 294 S.E.2d 419 (1982); Stokes v. First National Bank, 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988).

Accordingly, claimants' attorneys must insist that the employer comply with regulation 67-504, which requires that the basis for the termination of benefits be attached to the Form 15. It is also important to make your clients cognizant of the fact that they must keep you up to date with their medical care so that you can be prepared to request additional medical care or a second opinion when the company doctor is ready to release the worker to full or limited duty. The following five arguments are available to the employee to prove that the employer has not complied with the requirements of section 42-9-260:

1. The claimant did not actually return to work for 15 days,
2. The defendants failed to prove a good faith investigation,
3. The medical statements relied on by the defendants contain restrictions for which no accommodation has been made,
4. An effective offer of employment has not been made, and,

5. The "limited" or "light" duty required by the doctor was not truly made available by the defendants consistent with the doctor's restrictions.

As a practice pointer, it would be wise to photocopy section 42-9-260 and have a copy of the statute in the file each and every time you attend a stop-payment hearing. This will serve as a reminder to request the 25% penalty, point out that the hearing is not viable unless the employer or carrier is current with all payments due after the 150 day period has expired, and will allow you to point out that the fifteen day period is fifteen work days and not merely the expiration of fifteen calendar days. The statute will also act as a reminder that the 150 day period begins to run on the date reported and not on the date that benefits are first paid by the employer. For a more extensive evaluation of this issue, please consult the article authored by Preston F. McDaniel in South Carolina Trial Lawyers Bulletin, Spring 1999 issue. See Appendix 7.