

South Carolina Workers' Compensation Practice Manual

Second Edition

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SOUTH CAROLINA WORKERS' COMPENSATION PRACTICE MANUAL

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QUICK CASELAW INDEX

Mullinax v. Winn-Dixie Stores, 318 S.C. 431, 458 S.E.2d 76 (S.C. App. 1995).

Natural consequences flowing from a compensable injury, absent independent intervening cause, are compensable. New injuries resulting indirectly from treatment for original injury are compensable.

Sigmon v. Dayco Corporation, 316 S.C. 260, 449 S.E.2d 497 (S.C. App. 1994).

"[I]njury by accident" for workers' compensation purposes does not necessarily require a "causative event."

Singleton v. Young Lumber Company, 236 S.C. 454, 114 S.E.2d 837 (1960).

Where the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of the injury, the employee is limited to the scheduled compensation, even though other considerations such as age, lack of training, or other conditions particular to the individual, effect a total or partial industrial incapacity. To obtain compensation in addition to that scheduled for the injured member, the claimant must show that some other part of his body is affected.

Stokes v. First National Bank, 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988).

"It is not necessary that the accidental quality or condition be created by a wound or external violence. The term relates not only to the dynamics of the occurrence causing the injury but also to the injury itself.

"The term ... 'injury by accident' ... has been construed to mean not only an injury the means or cause of which is an accident, but also an injury which is itself an accident; that is, an injury occurring unexpectedly from the operation of internal or subjective conditions, without the prior occurrence of any external event of an accidental character."

'[N]o slip, fall or other fortuitous event or accident in the cause of the injury is required; the unexpected result or industrial injury is itself considered the compensable accident.'

Suburban Propane Gas Co. v. Deschamps, 298 S.C. 230, 379 S.E.2d 301, 302 (S.C. App. 1989).

A reviewing court may only reverse or modify a decision of an administrative agency if "such decision is affected by errors of law, characterized by abuse of discretion, or clearly erroneous in view of the reliable, probative and substantial evidence on the whole record."

Tiller v. National Health Care Center of Sumter, 334 S.C. 333, 513 S.E.2d 843 (1999).

The rule that expert testimony is required to establish causation of a medically complex condition, is not applicable in workers' compensation cases.

"Instead, the Commission is given discretion to weigh and consider all the evidence, both lay and expert, when deciding whether causation has been established. Thus, while medical testimony is entitled to great respect, the fact finder may disregard it if there is other competent evidence in the record. Indeed, 'medical testimony should not be held conclusive irrespective of other evidence.'"

"If a medical expert is unwilling to state with certainty a connection between an accident and an injury, the "expression of a cautious opinion" may support an award if there are facts outside the medical testimony that also support an award. Thus, if medical expert testimony is not solely relied upon to establish causation, the fact finder must look to the facts and circumstances of the case. Proof that a claimant sustained an injury may be established by circumstantial and direct evidence where circumstances lead an unprejudiced mind to reasonably infer the injury was caused by the accident." (citations omitted).

QUICK CASELAW INDEX

Bilton v. Best Western Royal Motor Lodge, 321 S.E.2d 63, 68 (S.C. App. 1984).

Substantial evidence is more than a mere scintilla, but less than a preponderance.

Brayboy v. Clark Heating, 306 S.C. 56, 409 S.E.2d 767 (1991).

"We hold as a matter of law, that a claim of change of condition may be based upon undiagnosed conditions, resulting from the original injury, which are discovered after the first award."

Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).

"[I]njured employees are not required to prove their injuries were caused by specific events in order to recover workers' compensation benefits."

Coleman v. Quality Concrete Products, 245 S.C. 625, 142 S.E.2d 43, 44 (1965).

"The generally accepted test of total disability is inability to perform services other than those that are 'so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.'"

Crosby v. Wal-Mart Stores, 330 S.C. 489, 499 S.E.2d 253 (S.C. App. 1998).

Idiopathic falls are not covered by the Workers' Compensation Act.

"An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury."

Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (S.C. App. 1999).

"[A]n employer may be liable for a claimant's future medical treatment if it tends to lessen the period of disability despite the fact the claimant has returned to work and has reached MMI."

Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981).

Substantial evidence has been defined as "evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its actions."

Lyles v. Quantum Chemical Co., 315 S.C. 440, 434 S.E.2d 292 (S.C. App. 1993).

A claimant who has sustained a 50% loss of use of the back is entitled to compensation for total disability. He need not prove loss of earning capacity and may, in fact, continue to work.

Marquard v. Pacific Columbia Mills, 278 S.C. 223, 295 S.E.2d 870 (1982).

A claimant need not elect between injury by accident and occupational disease theories.

Mauldin v. Dyna-Color/Jack Rabbit, 308 S.C. 18, 416 S.E.2d 639 (1992).

"Any reasonable doubts as to construction of the Act should be resolved in favor of coverage."

"Under the discovery rule, the statute of limitations begins to run from the date the petitioner knew or should have know of her compensable injury."

Mohasco Corp., Dixiana Mill Div. v. Rising, 292 S.C. 489, 357 S.E.2d 456 (1987).

This case spells out the elements of an occupational disease. It also points out the importance of a well drawn order.

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Ham v. Mullins Lumber Co. 193 S.C. 66, 7 S.E.2d 712 (1940).

- A. Due process requires notice of issues to be heard.
- B. Hearing Commissioner's decision is, "law of the case," unless specific issue is appealed.
- C. Act intended for benefit of workers' and must be liberally construed.
- D. Hearsay evidence is admissible.
- E. Circumstantial evidence is sufficient to support an award.
- F. Where there are no witnesses the physical facts and justified inferences drawn therefrom are to be considered and may support an award.

Hanks v. Blair Mills Inc., 286 S.C. 378, 335 S.E.2d 91 (S.C. App. 1985).

- A. Knowledge of medical and employment history and diagnosis sufficient to give employer notice.
- B. Education and experience in life and behavior of workers who contract occupational disease are factors in determining when worker receives notice for purpose of statute of limitations. Knowledge of, "chronic obstructive pulmonary disease," diagnosis is not notice of occupational disease to worker.
- C. For set off under §42-11-90 insurance carrier has burden of proof to establish percentage of employees disability claimed to be from non work-related cause.

Parker v. Williams and Madjanik, Inc., Three (3) Supreme Court cases: 275 S.C. 65, 267 S.E.2d 524; 270 S.C. 570, 243 S.E.2d 451; 269 S.C. 662, 239 S.E.2d 487

These cases involve the same accident where a, contract hourly crane with operator, killed an employee of the primary contractor. These cases together involve and constitute an excellent review of Issues: S.C. Code §42-1-400 through 440; General vs. sub-contractor; Statutory employee; Exclusivity doctrine; Upstream-Downstream right to sue; Dual capacity doctrine.

Roper v. Kimbrell's of Greenville, Inc. 231 S.C. 453, 99 S.E.2d 52 (1957) and **Bundrick v. Powell's Garage and Wrecker Service** (1966).

These cases clearly set out that impairment does not equal loss of use and that loss of use is a Commissioners' decision.

Roper -

- D. There is no requirement of direct injury to scheduled member (broken ribs and collar bone award of 40% loss of use left arm and 15% right arm appropriate).
- E. Loss of use is to be given its common everyday meaning and in determining loss of use the Commission may base its decision on any competent evidence whether it be medical, professional or lay testimony.

Bundrick -the medical impairment ratings were 10% and 20%. The Commission awarded 50% loss of use basing its decision on lay testimony and its observation.

Sturkie v. Ballenger, 268 S.C. 536 (1977)

- A. Unexpected result constitutes injury by accident;
- B. Compensability of event as accident is question of law;
- C. Diseases caused by exposure are compensable where result was unexpected;
- D. Exacerbation of pre-existing disease or injury is compensable;
- E. Where work and its environment of circumstance exposes employee to greater risks than general public accident is established.

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Booth v. Midlands Trane Heating and Air Conditioning, 298 S.C. 251, 379 S.E.2d 730 (S.C. App. 1989).

S.C. Code §42-1-50 (Average weekly wage) 63% increase in wages over 12 months is "exceptional reason" for not following regular method of calculating average weekly wage.

Bowen v. Chiquola Manufacturing Co., 238 S.C. 322, 120 S.E.2d 99 (1961).

Best case for understanding how to argue a partial loss of earning capacity under S.C. Code §42-9-20. Case sets out two methods recognized by the Supreme Court to determine partial loss of earning capacity.

Chavis v. Watkins, 256 S.C. 30, 180 S.E.2d 648 (1971).

Sets out four factors for determining Employee-Employer relationship under S.C. Code §42-1-130. Deals with many issues in that relationship in a close factual case.

Colvin v. E.I. DuPont De Nemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955).

- A. Defines "total disability" under the Act for Award for loss of earning capacity under §42-9-10 and §42-1-120. Holds disability does not require complete helplessness. Claimant in "odd lot" category entitled to PTD under S.C. Law. See: Larson's Workers' Compensation §57.51.
- B. Disability is a relative term and must be related to the occupation of the claimant. Where a claimant is qualified only for common labor based on his education, background and experience and now due to injury is disabled from such employment, the claimant is totally disabled under the Act.
- C. Defines injury by accident.

Halks v. Rust Engineering Co., 208 S.C. 39, 36 S.E.2d 852 (1946).

- A. Agreement to pay temporary compensation entered between employee-employer/carrier filed with Commission sufficient for statute of limitations. Once claim for any benefit is filed (T.T., Medical, etc.), a claim for any and all benefits has been filed.
- B. Cites Gold v. Moragne, 202 S.C. 281, 24 S.E.2d 491 (1943) seminal case on waiver or estoppel by employer as to statute of limitations. Served as basis for Young v. Sunoco, 210 S.C. 146, 41 S.E.2d 860 (1947) and Poole v. E.I. DuPont DeNemours and Co., 227 S.C. 232, 87 S.E.2d 640 (1955), (non w.c. disability payments toll statute).
- C. Stop payment and/or right to other compensation benefits requires Hearing, notice and opportunity to be heard by claimant.
- D. Compensation claim pending before W.C. cannot be dismissed without Hearing.
- E. "when claimant was able to return to work was for determination by Commission."
- E. Awards for permanent disability are premature until a claimant reaches a, "maximum healing point." When that point is reached and when a claimant is able to return to work are decisions for the Commission.

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Maximum Compensation Rates

1990-----	\$ 350.19
1991-----	\$ 350.19
1992-----	\$ 379.82
1993-----	\$ 393.06
1994-----	\$ 410.26
1995-----	\$ 422.48
1996-----	\$ 437.79
1997-----	\$ 450.62
1998-----	\$ 465.18
1999-----	\$ 483.47
2000-----	\$ 507.34
2001-----	\$
2002-----	\$

Mileage Reimbursement Rates

1997-----	31.5 ¢ per mile.
1998-----	32.5 ¢ per mile.
1999-----	31.0 ¢ per mile.
2000-----	32.5 ¢ per mile.
2001-----	
2002-----	

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