



HENRY McMASTER
ATTORNEY GENERAL

January 12, 2010

Gary M. Cannon, Executive Director
Workers' Compensation Commission
P. O. Box 1715
Columbia, South Carolina 29202-1715

Dear Mr. Cannon:

In a letter to this office you indicated that the Workers' Compensation Commission (hereinafter "the Commission") is developing a new program which will allow attorneys and claims administrators access to the status of the claim(s) to which they are a party via the internet. Access to this program will be password protected and limited to those attorneys and claims administrators who have been approved by your staff. Attorneys and claims administrators will be able to review the status of their claims as well as the Appellate Review Hearing Roster. You stated that the Appellate Review Hearing Roster consists of cases where a hearing has been conducted by a Commissioner and is considered public record. You have referenced the provisions of S.C. Code Ann. § 42-19-40 which state that

[t]he records of the Commission, in so far as they refer to accidents, injuries and settlements, shall not be open to the public, but only to parties satisfying the Commission of their interest in such records and of the right to inspect them.

You stated that you have received a request from attorneys and claims administrators to provide the Single Commissioner Hearing Roster and a listing of pending cases to be set for hearing on this password protected website. You are requesting an opinion on the question of whether the Commission would be in violation of Section 42-19-40 if you provide the Single Commissioner Hearing Roster and a listing of pending cases to be set for hearing, if the Commission is satisfied of the parties' interest in such records and of the right to inspect them.

In its decision in Blue Cross and Blue Shield of South Carolina v. South Carolina Industrial Commission, 274 S.C. 204, 262 S.E.2d 35 (1980), the State Supreme Court dealt with a situation where Blue Cross was seeking access to records within the Commission's control and the right to participate in proceedings before the Commission when an employee-claimant held one of its

policies. In its decision, the Court referenced its previous decision in Owens v. Herndon, 252 S.C. 166, 165 S.E.2d 696 (1969) where it stated that

[t]he rights and liabilities of employee and employer under the Workmen's Compensation Act are purely statutory and are to be judged by the terms of the Act. Policy considerations as to what benefits should be conferred or obligations imposed are strictly for the legislature....

The Court noted that the request of Blue Cross to the Court

...is to be permitted mass discovery in all cases of injured employees who have Blue Cross policies, whether there is or is not a dispute between Blue Cross and its policy holder. Not before us is the question of the right of Blue Cross to discover Commission records in a civil action to which it is a party.

274 S.C. at 208. Noting the provisions of Section 42-19-40 referenced above, the Court stated that "[w]e think the Commission has properly interpreted the term 'parties' as referring to employees and employers." The Court noted the provisions of S.C. Code Ann. § 42-3-170 that allows hearing before the Commission to be public. In light of such, the Court stated that

...when a case reaches the hearing stage, the private nature of the dispute loses its confidential status. Accordingly, because of the public nature of the hearings, all awards, decisions and opinions of the Industrial Commission, together with the transcripts of that which took place at the hearing, are available to the public and to Blue Cross.

274 S.C. at 208-109. The Court further noted that this State's Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq. offered no further access to such proceedings.

Citing such decision, this Office in a prior opinion dated August 31, 1984 concluded that a legislative committee is not an "interested party" for purposes of Section 42-19-40. Another opinion dated April 3, 1980 stated that the Blue Cross decision

...makes it clear that the reason for access to...transcripts, opinions, and awards is that hearings of the Commission are open to the public; once a hearing has been held, any confidentiality conferred by Section 42-19-40 disappears. The key is the hearing. If there is no hearing, Section 42-19-40 controls, and such records remain confidential. Accordingly, where a case has been settled prior to a hearing, Section 42-19-40 would require that these files be kept confidential....

An opinion dated September 8, 1977 stated that Section 42-19-40 "...evinces a policy that the Commission's records are not to be opened to public inspection."

Mr. Cannon
Page 3
January 12, 2010

As referenced, Section 42-19-40 states that "[t]he records of the Commission, in so far as they refer to accidents, injuries and settlements, shall not be open to the public, but only to parties satisfying the Commission of their interest in such records and of the right to inspect them." Consistent with the above authorities, in the opinion of this office, Section 42-19-40 would allow access to the Single Commissioner Hearing Roster and a list of pending cases to be set for hearing only to employees and employers and, as expressed by you, attorneys and claims administrators as to claim(s) to which they are a party. In other words, in the opinion of this office, the parties which would have access to such records would be restricted to those in which they have an interest and can satisfy the Commission of their right to inspect such records. Such records at the Single Commissioner Hearing stage would not generally be public information.

If there are any questions, please advise.

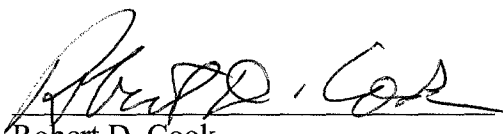
Very truly yours,

Henry McMaster
Attorney General



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