

The State of South Carolina

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March 30, 1988

The Honorable John C. Land, III
Member, South Carolina Senate
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Manning, South Carolina 29102

Dear Senator Land:

You have asked the opinion of this Office regarding Section 42-3-20 as it relates to the workers compensation appeal procedures. You pose the hypothetical question where a single commissioner rules that a claim is compensable and the single commissioner's decision is appealed to the full Commission and the appeal is assigned to a panel of three commissioners for review. Further, according to your hypothetical, the panel of three commissioners decides by a two-one vote that the claim is not compensable. You inquire whether the earlier decision of the single commissioner must be counted in a vote of the review panel as a vote favoring the claim. In other words, you question whether the three commissioner panel may overrule the decision of a single commissioner absent an unanimous vote by the commissioners sitting on the panel. I advise that the language used by the General Assembly does not direct such a conclusion, and as will be explained herein, we believe the courts would defer to the contrary interpretation followed by the Workers' Compensation Commission. Thus, it is the opinion of this Office that the hearing commissioner's ruling does not constitute a vote for the purpose of determining the ruling of the three member review panel.

The starting point in resolving questions regarding the interpretation of statutes is to review the language chosen by the General Assembly. U.S. v. Jackson, 759 F.2d 342 (4th Cir. 1985), cert. den. 474 U.S. 924. Section 42-3-20 provides in relevant part:

The commissioners shall hear and determine all contested cases, conduct informal conferences when

necessary, approve settlements, hear applications for full Commission reviews and handle such other matters as may come before the department for judicial disposition. Full Commission reviews shall be conducted by six commissioners only, with the original hearing commissioner not sitting at such reviews. When one commissioner is temporarily incapacitated or a vacancy exists on the Commission, reviews may be conducted by the five remaining commissioners but in such cases decisions of the hearing commissioner shall not be reversed except on the vote of at least four commissioners; provided, however, that effective July 1, 1981 full Commission reviews may be conducted by three-member panels composed of three commissioners appointed by the chairman excluding the original hearing commissioner. The chairman, with unanimous approval of the other commissioners, shall determine which full commission reviews shall be assigned to panels. The decisions of such panels shall have the same force and effect as nonpanel full commission reviews. (Emphasis added).

The proviso (emphasized language) was added in its entirety by 1981 Act 178, Part II, Section 15. It provided for the first time the authority and governance for the conduct of full Commission reviews by panels of three commissioners.

The General Assembly had prior to the enactment of the proviso in 1981 chosen to specify in detail the procedures that govern all full Commission reviews. Section 42-3-20 affirmatively requires for full Commission reviews not assigned to a panel that "the hearing commissioner shall not be reversed except on the vote of at least four commissioners."¹ The General Assembly also has directed that the single hearing commissioner not participate in full Commission reviews. In 1981 when the General Assembly enacted the proviso to Section 42-3-20 in order to authorize and govern panel reviews the General Assembly did not incorporate the specific language requiring a vote of "four commissioners" to reverse the hearing commissioner. Of course, this four vote requirement could not have reasonably been made applicable to three member review panels since the requirement is specifically tailored to reviews conducted by either five or six commissioners. More significantly, the General Assembly did not otherwise prescribe the number of votes required to reverse the single commissioner's ruling when the review is conducted by a three commissioner panel. On the other hand, the General Assembly did make clear that the single hearing commissioner was

¹ See Acts 1055 of 1974 and 522 of 1978 to trace the history of this provision.

precluded from participation as a member of the three commissioner review panel. Thus, our intrinsic review of the statute directs the conclusion that with regard to the conduct of three commissioner panel reviews, the General Assembly has not prescribed the required number of votes in order to reverse the decision of the hearing commissioner, and further, the hearing commissioner may not vote or otherwise participate in a panel review of his decision.

Since the General Assembly has not dictated these procedures to be employed in the conduct of panel reviews, we are compelled to look to the Workers' Compensation Commission to determine any reasonable construction it has accorded the proviso. Our Court has consistently held that:

The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.(2d) 118 (1986); Faile v. South Carolina Employment Security Comm'n, 267 S.C. 536, 230 S.E.(2d) 219 (1976).

Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132 (1987). Specifically, in cases involving the Workers' Compensation Commission, the Court has articulated that "[t]he Industrial (Workers Compensation) Commission is a quasi judicial board and as such is vested with a wide discretion in procedural matters." Gurley v. Mills Mill, 225 S.C. 46, 51, 80 S.E.2d 745 (1954); See also, Schwartz v. Mt. Vernon-Woodberry Mill, Inc., 206 S.C. 227, 33 S.E.2d 517 (1944); Green v. Raybestos - Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318 (1967). We are advised that the Commission has consistently interpreted and applied the proviso as requiring the vote of only two members of a three commission² panel in order to reverse the ruling of a hearing commissioner.

Sections 42-3-20 and 42-17-50 together provide the statutory scheme that permits administrative review of a single commissioner's order by appeal to the full Commission, In Re: Crawford, 205 S.C. 72, 30 S.E.2d 841 (1944), or alternatively in accordance with the 1981 proviso the appeal may be assigned to a three member panel. Thus, the administrative review is similar to an appellate review of a trial court's decision by the South Carolina Court of Appeals. Significantly, the Court of Appeals is authorized to sit in designated three judge panels and the vote of a simple majority of a panel is sufficient to reverse the trial judge's rulings. See, § 14-8-80. Accordingly, the Commission's interpretation of this proviso cannot be said to be

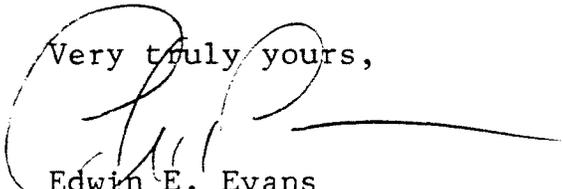
² See Memorandum of the Workers' Compensation Commission dated August 27, 1986.

unreasonable, or, as earlier noted, inconsistent with the statutory language; thus, the Commission's interpretation must be respected.

We do not here suggest that we would or would not interpret the proviso in the manner chosen by the Commission (as permitting reversal of the single commissioner upon the vote of two members of the panel) if we were writing upon a clean slate since such a consideration is simply not relevant in construing the proviso. Nonetheless, we do not ignore the persuasiveness of the Senator's position that when two members of the Commission favor the Respondent and two favor the Claimant - why does the Respondent prevail? However, as we have earlier noted deference to the Commission's interpretation is required since the Commission is the single agency charged with administration of the workers compensation laws. Of course, the General Assembly could by legislation prescribe the number of votes required of a three-member panel in order to reverse the hearing commissioner; but herein it has chosen not to so do.

Accordingly, we reiterate our conclusions rendered herein. First, the General Assembly did not require in the conduct of three member review panels a certain number of votes in order that the single hearing commissioner's decision be reversed, and thus, this becomes a matter to be determined by the Workers Compensation Commission. The General Assembly, did, however, expressly preclude participation in the panel reviews by the single hearing commissioner, and accordingly, the hearing commissioner's decision does not constitute a vote upon review. Since the Commission's construction of the proviso, that the vote of two members of the panel is sufficient to reverse the hearing commissioner's decision, is neither unreasonable nor inconsistent with the statutory language deference to that agency's interpretation is required.

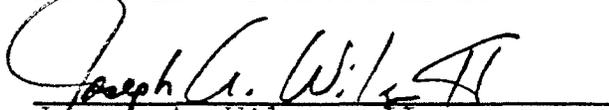
Very truly yours,



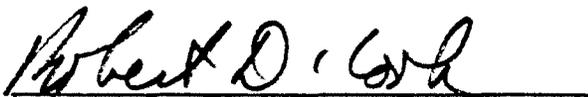
Edwin E. Evans
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