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Opinion No 15-17

RJ 207

Office of the Attorney General

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August 2, 1985

James J. Reid, Chairman  
South Carolina Industrial Commission  
Middleburg Office Park  
1800 St. Julian Place  
Columbia, South Carolina 29204

Dear Mr. Chairman:

You have requested the opinion of this Office concerning whether the South Carolina Industrial Commission can delegate its duty to approve a settlement under the Workers' Compensation Act to a deputy Commissioner. We agree with the reasoning in your letter and conclude that neither the Commission nor its Commissioners can delegate the duty to approve a settlement to a deputy.

Section 42-3-180 of the South Carolina Code of Laws of 1976 (1984 Cum.Supp.) provides:

All questions arising under this Title, if not settled by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commission, except as otherwise provided in this Title. [Emphasis added].

In construing a statute, the language used should be given its plain and ordinary meaning. State v. Hardee, \_\_\_ S.C. \_\_\_, 308 S.E.2d 251 (1983). The above quoted language is specific in identifying the requirement that all questions arising under this Title (Title 42) and in specifically all settlements under this Title should be approved by the Commission. An examination of the statutes addressing the duties of the Commission and its Commissioners as contrasted with the duties of the deputy Commissioners supports this view.

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Section 42-3-20 of the amended Code states in pertinent part the following:

The Commissioners shall hear and determine all contested cases, conduct informal conferences when necessary, approve settlements, hear application for full commission reviews and handle such other matters as may come before the department for judicial disposition. [Emphasis added].

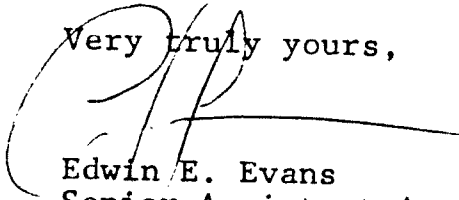
Thus, the Workers' Compensation Act expressly provides that the power to approve a settlement rests with the Commissioners. More specifically, the statutes dictate that if there is a voluntary settlement between an employer and employee a copy of any such settlement is to be filed by the employer and approved by a Commissioner. § 42-9-30; see also, § 42-17-10. Where, as here, the Compensation Act expressly provides that a particular act or duty should be performed only by the Commission or its Commissioners, only those officials so designated may perform the act or duty, and in the absence of statutory authorization, the act or duty may not be delegated to another official, such as a deputy Commissioner. 100 C.J.S. WORKMEN'S COMPENSATION, § 384; Powell v. Industrial Commission, 102 Ariz. 11, 423 P.2d 348 (1967).

With regard to the approval of settlements, this duty is most important and involves a determination by the reviewing officer that the agreement is in the interest of the claimant, and moreover, assures that the agreement is elevated to the status of a judicial decree for the purposes of judicial enforcement. Mackey v. Kerr-McGee Chemical Co., S.C. \_\_\_ 312 S.E.2d 565 (S.C.App. 1984). Because this decision to approve a settlement involves an exercise of discretion, the approval is ordinarily vested with an official who maintains quasi judicial power under the compensation act. Carpenter v. Globe Indem. Co., 65 R.I. 194, 14 A.2d 235 (1940). In South Carolina, the duties that may be delegated to deputies as authorized by the Act are not similar to that of approval of a settlement. For example, a deputy commissioner may swear a witness and hear and transmit testimony to the Commission; but however, any determination of liability and of an award must be made by the Commission or a Commissioner. See, § 42-17-40. In addition, a deputy is authorized to subpoena witnesses and documents. § 42-3-140. Again, these specified, authorized

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duties are dissimilar to the discretionary function of approval of a settlement under the Compensation Act. Thus, it appears that the legislative scheme does not intend that this type of discretionary decision be made by persons other than the Commissioners, particularly in the absence of express statutory authority.

Very truly yours,



Edwin E. Evans  
Senior Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions