

1982 WL 189370 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 20, 1982

**\*1 Re: Opinion Request**

The Honorable T. M. Nelson  
Chairman  
S. C. Industrial Commission  
1800 St. Julian Place  
Columbia, South Carolina 29204

Dear Commissioner Nelson:

You have requested an opinion regarding the following two worker's compensation questions:

I.

If the claimant is receiving periodic payments from the Industrial Commission for compensable injuries, may the Commission approve an arrangement for attorney's fees whereby every third compensation check would be made payable to the attorney? The answer to this question is no. Although the Commission is granted rather broad powers under [Section 42-3-20, Code](#) and [42-15-90, Code](#) to approve attorney's fees, the powers are not plenary. The Industrial Commission is a creature of statute having only those powers which are expressly granted to it by the creating statute or those powers contained therein by necessary implication. [Richland County Department of Public Welfare v. Mickens](#), 246 S.C. 113, 142 S.E.2d 737 (1965). There is no provision either in the statute or the regulations promulgated in accordance therewith which would allow the Commission to take the action described above. Such a procedure would place the Commission in the role of a collection agent which is not within its statutory mandate.

II.

Your second question is whether or not a worker found by a single Commissioner to be seriously and permanently disfigured is required to present himself as an exhibit before the full Commission upon review by that body. In several South Carolina disfigurement cases the claimant's body was considered as evidence or as an exhibit. [Parrot v. Barfield Used Parts](#), 34 S.E.2d 802, 206 S.C. 381, (1945); [Dykes v. Daniel Construction Company](#), 202 S.E.2d 646, 262 S.C. 98, (1974).

In [Parrot](#) the claimant appeared before the single Commissioner who, among other things, found serious bodily disfigurement based upon his observation of the claimant. Claimant was not observed by the full Commission and there was no other evidence in the record regarding his disfigurement. On appeal the Supreme Court found that no competent evidence of disfigurement existed and stated:

It is argued in this case that the observation of the claimant by an Industrial Commissioner and the conclusion of such Commissioner that the claimant has a serious bodily disfigurement is in itself sufficient evidence to support a disfigurement award. We do not subscribe to this view. When there is competent evidence of disfigurement and the claimant is viewed by the full Commission . . . this court will not undertake to substitute its judgment for that of the full Commission . . . In a disfigurement case the claimant is for all practical purposes an exhibit.

It can readily be seen that the Supreme Court not only considered the claimant an exhibit but also strongly implied that it would have reached a different result had the full Commission held a viewing of the claimant as part of its review.

\*2 The Dykes case is factually similar to Parrot. In Dykes the claimant suffered an injury to his eye under circumstances which would give rise to a worker's compensation award for disability. In addition to the disability, the hearing Commissioner found that the injury to the eye constituted compensable disfigurement and issued an award on that basis. Upon review the claimant was viewed by the full Commission and a description of the disfigurement was included in the record.

In answer to the carrier's assertion in Dykes that no competent evidence of disfigurement existed the court stated that the claimant's body was in evidence and that no better evidence could be obtained on this issue. See also [Shillinglaw v. Springs Cotton Mills](#), 209 S.C. 379, 40 S.E.2d 502, (1946); [McCoy v. Easley Cotton Mills](#), 218 S.C. 350, 62 S.E.2d 772 (1950).

While the above-cited line of cases does not specifically order viewings by the full Commission in disfigurement cases it does treat the claimant's body as evidence and mandates detailed findings by the Commission which would be difficult to obtain without a viewing. Based upon the above it is the opinion of this office that the claimant's body in disfigurement cases should be viewed upon review by the full Commission along with the other competent evidence.

I trust that this has sufficiently answered your questions. If not, please feel free to contact me.

Sincerely,

Clifford O. Koon, Jr.  
Assistant Attorney General

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