

1979 S.C. Op. Atty. Gen. 11 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-6, 1979 WL 29012

Office of the Attorney General

State of South Carolina

Opinion No. 79-6

January 10, 1979

***1 SUBJECT: Workmen's Compensation**

When the Full Industrial Commission reviews a Single Commissioner's order and the Full Commission is equally divided three to three, the Single Commissioner's order will stand as if affirmed.

TO: The Honorable James J. Reid
Chairman
South Carolina Industrial Commission

QUESTION:

What is the effect of a tie vote by the Full Industrial Commission when reviewing the Hearing Commissioner's order?

STATUTES AND CASES:

Act 1055 of 1974; Act 522 of 1978; Section 72-50.1, Code of Laws of South Carolina, 1962, as amended; Section 42-3-20, Code of Laws of South Carolina, 1976; Gurley v. Mills Mill, 225 S.C. 46, 80 S.E.2d 745 (1954); Hutchinson v. Turner, 88 S.C. 318, 70 S.E. 410 (1910); McAulay v. McAulay, 96 S.C. 86, 79 S.E. 785 (1913).

DISCUSSION:

The rule in this State insofar as decisions of the Supreme Court are concerned is that, where the court is composed of only four members and they are equally divided, the judgment below is properly affirmed. Hutchinson v. Turner, 88 S.C. 318, 70 S.E. 410 (1910); McAulay v. McAulay, 96 S.C. 86, 79 S.E. 785 (1913). However, in Gurley v. Mills' Mill, 225 S.C. 46, 80 S.E.2d 745 (1954), the Supreme Court held that the above stated rule applies only to decisions of the Supreme Court and is not applicable to the Industrial Commission. The Court based its holding on the fact that the rule stems from a constitutional provision applicable only to the Supreme Court. In Gurley, one of the commissioners vacated his office before any decision on review was rendered, leaving only four commissioners to vote on review. The remaining four, having divided evenly, directed that another hearing be held on review so that the new fifth commissioner could participate. The Supreme Court approved this procedure.

However, the General Assembly has amended the statutes dealing with workmen's compensation in a manner that now makes clear the effect of a decision by the Industrial Commission where the Commission is equally divided. Act 1055 of 1974 created two departments within the Industrial Commission. The section dealing with the judicial department states in pertinent part: Full commission reviews shall be conducted by five commissioners only, with the original hearing commissioner not sitting at such reviews. When one commissioner is temporarily incapacitated or a vacancy exist on the commission, review may be conducted by the four remaining commissioners but in such cases decisions of the hearing commissioner shall not be reversed except on the vote of at least three commissioners. (Emphasis added). Section 72-50.1, Code of Laws of South Carolina, 1962, as amended, (Section 42-3-20, 1976 Code).

This section was amended by Act 522 of 1978 which increases the number of commissioners from six to seven, provides for a full commission review by six commissioners only, with the original hearing commissioner not sitting at such review, allows review by five commissioners if one is incapacitated or a vacancy exists, and states that 'decisions of the hearing commissioner shall not be reversed except on the vote of at least four commissioners.' Therefore at a full commission review, if the Commission is equally divided three to three, the hearing commissioner's order would stand as if affirmed, since at least four commissioners did not vote to reverse.

CONCLUSION:

*2 For the foregoing reasons, it is the opinion of this Office that, if the full Industrial Commission reviews a single commissioner's order and is equally divided three to three, the hearing commissioner's order will stand as if affirmed.

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