1977 S.C. Op. Atty. Gen. 37 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-35, 1977 WL 24378

Office of the Attorney General

State of South Carolina
Opinion No. 77-35
January 27, 1977

***1** The Honorable Isadore E. Lourie
Chairman
Workmen's Compensation Legislative Study Committee
1224 Pickens Street
Columbia, SC 29201

Dear Senator Lourie:
You requested the opinion of this Office as to whether the powers granted to the medical board created pursuant to Code § 72–261, et seq. are a constitutionally impermissible delegation of the fact finding responsibilities of the Industrial Commission.

You state that particular concern has been expressed as to whether § 72–265 violates the party's right to a fair hearing for determination of factual issues.

Section 72–265, which, like § 72–261, has been a part of our workmen's compensation laws since 1949, provides as follows:
The decisions and award in the case shall conform to the findings and conclusions in such report in so far as restricted to medical questions, save that either party may, within ten days after receipt of a copy of the report, file written objection thereto with the Commission which shall remand the matter to the same or another board if it be proven that the conclusion of the board upon a medical question be manifestly erroneous or unreasonable or due to fraud, undue influence, inadvertence or mistake of law or fact.

While the section states that decisions and award are to conform to the board's report, there is also provided a mechanism by which either party may file with the Commission the party's objections to the board report.

In Brittle v. Raybestos-Manhattan, Inc., 241 S.C. 255, 127 S.E.2d 884 (1962), the Supreme Court made reference to §§ 72–261 and 72–265. The appellant-employer contended, inter alia, that the Industrial Commission erred in disregarding the medical report and findings of the medical board, which had been appointed on motion of the appellant pursuant to § 72–261, since no exception had been filed thereto. The Supreme Court expressly stated that:
The extent to which the Industrial Commission is bound by the findings of the Medical Board need not be considered . . .

The constitutionality of the section does not appear to have been questioned.

My review of case law from other jurisdictions, including Duncan v. McNitt Coal Co., 129 A.2d 523, 212 Md. 386 (1957) (silicosis claim); Unora v. Glen Alden Coal Co., 104 A.2d 104, 377 Pa. 7 (1954) (anthraco-silicosis claim); Farrill v. Travelers Ins. Co., 125 S.E.2d 563, 105 Ga.App. 600 (1962) (silicosis claim); Griffith v. Employers Mutual Liab. Ins. Co., 110 S.E.2d 539, 100 Ga.App. 157 (1959) (dematitis herpetiformis claim); and Bethlehem Steel Co. v. Carter, 165 A.2d 902, 224 Md. 19 (1960) (silicosis claim), as well as the legal encyclopedia, 100 C.J.S. Workmen's Compensation §§ 382, 384, indicates that medical boards similar to our own are not uncommon. I am aware of no cases where the mechanism has been held unconstitutional for the reason you cite.

The policy of this Office is to advise that an act passed by the General Assembly is presumed to be constitutional, except for those acts which are on their face clearly unconstitutional.

***2** Based on the above, it is my opinion that the provisions you cite are to be presumed to be constitutional.
Very truly yours,

Edward E. Poliakoff
Assistant Attorney General

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