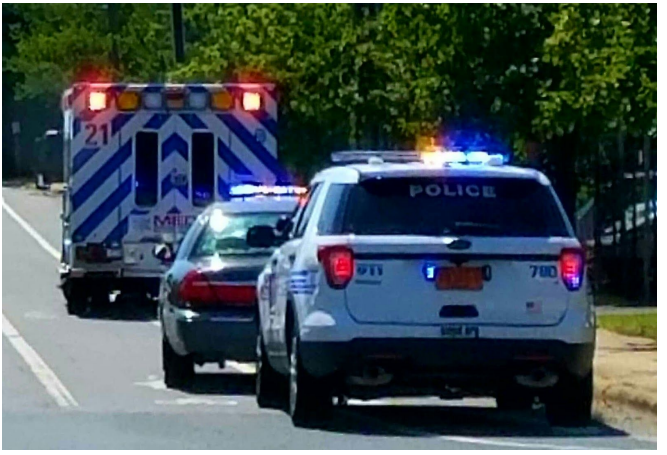
Robert J. Reeves P.C.
INJURY • CRIMINAL • FAMILY LAW

What to Do If Hurt at Work in South Carolina

What to Expect. What You Need to Know.



Law Offices of Robert J. Reeves P.C.
Personal Injury eBook Series
SC Workers' Compensation

Robert Reeves is a veteran trial lawyer with over 30 years experience handling South Carolina workers' compensation cases. During his first seven (7) years of practice, he was an

insurance defense attorney. This background taught him how to negotiate effectively with adjusters and how to prepare for anticipated defenses.

Prior to law school, he was a former Registered Nurse (RN) working in Intensive Care and surgery. From that training, Mr. Reeves understands complex injury cases and can explain the physiological consequences of serious accidents and resulting disability.

Mr. Reeves is a member of the Million Dollar Advocates Forum, National Trial Lawyers Top 100, and Best Attorneys of America. He is also a member of the South Carolina Workers' Compensation Educational Association since 1989.

**Membership in these and other professional organizations is not intended to convey anything other than my commitment to being the best lawyer that I can be. Every case is different, and a full investigation of all relevant facts is necessary before a lawyer can render advice on compensability or ultimate case value. In addition, no matter how serious the initial injury, everything depends on the degree of permanent disability in every workers' compensation claim.

Table of Contents

Chapter One

"Injury by Accident"

Every workers' compensation case starts with an "accident" on the job. However, not every "accident" results in a compensable "injury." And likewise, not every "injury" is the result of a compensable "accident." While most claims are straightforward and accepted, many are not. For example, if you have an unwitnessed accident and do not promptly report it, the employer and insurance carrier may initially deny benefits until they complete an internal investigation. While the case is being reviewed,

you are not receiving medical treatment or weekly benefits. Time is critical here. That's when you need to get an experienced workers' compensation lawyer involved in your case.

SC Code of Laws Section 42-1-160 defines (A) "injury" and "personal injury" as meaning only "injury by accident arising out of and in the course of employment." This is an unusually short definition by legislative standards, but each word in the chain is critically important. All elements listed have to be satisfied to be a compensable claim. So exactly what does "arising out of" and "in the course of employment" actually mean? In many cases, the answer is fairly easy. For example, if you get your hand caught in a machine or if you hurt your back while lifting something heavy, it is a compensable claim. On the other hand, if you simply lose your balance and fall, it may not comply with the statutory definition. Simply getting hurt while at work is not always enough. Rather, the injury must have some relation to the employment.

Chapter Two
Notice of Accident to Employer

SC Code of Laws Section 42-15-20 requires "(A) every injured employee or his representative immediately shall on the

occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a notice of the accident and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this title prior to the giving of such notice, unless it can be shown that the employer, his agent, or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person. (B)…no compensation shall be payable unless such notice is given within ninety (90) days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby. That's a lot. So what does this mean practically?

If someone is seriously hurt at work, notice to the employer and medical care to the injured worker is usually immediate. An ambulance comes and takes them to the hospital or trauma center. So here, there is no question or issue about notice. However, for someone who feels pain while lifting or has a minor accident with minimal injury, any delay in reporting now can cause problems later.

In heavy physical jobs, a worker may feel pain regularly if not daily. It often comes with a hard labor job. As a result, it may not be realistic to stop every time to report a possible claim. In fact, repeatedly reporting something could get them fired. Nevertheless, under this statute, it is important to report any accident as soon as possible. In addition, you should also request a medical evaluation so that there is a medical record documenting the event. In many cases, what is first thought to be a relatively minor injury turns out later to be much more serious.

Another common scenario is where an employee has an "unwitnessed" accident. Given fraudulent claims in the past, employers and the Commission are skeptical of claims reported days or weeks after the alleged accident date. Regardless, any claim not reported within ninety (90) days without good cause will be denied and barred by law.

Chapter Three
Filing a Claim

SC Code of Laws Section 42-15-40 mandates the time for filing claim, stating "the right to compensation under this title is barred unless a claim is filed with the Commission within two (2) years after an accident, or if death resulted

from the accident, within two (2) years of the date of death." Even though the law allows up to two years, it is best to file a claim as soon as you can to get your weekly pay benefits and medical treatment started. Notice and filing a claim are two separate deadlines, but both must be met. For example, if you do not report an accident within ninety days, your claim is lost even if you file a claim within the two years statute of limitations. Time is critical. So don't delay. Best to get an experienced workers' compensation attorney involved in your case as soon as possible so costly mistakes can be avoided.

Chapter Four
Medical Treatment

SC Code of Laws Section 42-15-60 requires, in relevant part, that "(A) the employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required…as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty…the refusal of an employee to accept any medical, hospital, surgical, or other treatment or evaluation when provided by the employer or ordered by the commission bars the employee from further

compensation until the refusal ceases and compensation is not paid for the period of refusal unless in the opinion of the commission the circumstances justified the refusal, in which case the commission may order a change in the medical or hospital service."

Because of the many different injuries and range of medical treatments available, this statute had to be written in a very broad way. But basically, it means if you have an accepted claim, you are entitled to whatever reasonable medical treatment that may help you improve or heal. More specifically, any test, procedure, or surgery recommended by an "authorized treating physician" is going to be ordered.

In some cases, an "independent medical evaluation" is requested by the carrier or sometimes the claimant. If the IME results in treatment recommendations that the insurance carrier refuses, there may need to be a hearing just on this issue alone. Here, the lawyers get "opinion" letters from and/or take depositions of different doctors and then go before a WC Commissioner. Following this statute, the Commissioner is supposed to order the carrier to pay for reasonable care that "will tend to lessen the period of disability."

So what happens if an injured worker doesn't

like the treatment recommendations. Can they refuse a procedure or surgery. Well they can. Of course. However, refusal to participate in authorized medical treatment can result in a termination of benefits. Here, the Commission will have to make a judgment call on whether the claimant is being reasonable and prudent. Regardless, refusal of any recommended procedure can often lead to a lower final disability award. Better check with an experienced workers' compensation lawyer before you make this decision. It might be the right call but will have consequences in your case outcome.

Chapter Five
Weekly Benefits

Average Weekly Wage / Compensation Rate

SC Code of Laws Section 42-1-40 defines "average weekly wages" as "the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury… (or) such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury…Whenever allowances of any character

made to an employee in lieu of wages are a specified part of a wage contract they are deemed a part of his earnings."

This initial calculation is critical as it will become your "weekly benefit" amount or the check you will use to pay your bills during treatment. And, at the conclusion of your case, your CR will be used to calculate the value of any eventual permanent partial disability award. The employer will file with the Commission a Form 20 which will show all earned wages during the previous fifty-two (52) weeks from the date of accident. That amount is then divided by the number of weeks actually worked and becomes your "average weekly wage." You're then entitled to two-thirds (2/3) of the AWW which becomes your weekly "compensation rate."

Workers' compensation benefits are NOT taxable income. In fact, you don't even report them on either your State or Federal tax filings. So when do benefits begin? By making them non-taxable, it helps offset the loss of one-third of your usual wages. It also helps to motivate you to return to work as soon as you can by design. There is also a statutory maximum amount determined each year. So for high wage earners, you may be even more affected than others. That's why every dollar counts in

workers' compensation cases.

So When Do Your Weekly Checks Start?

SC Code of Laws Section 42-9-200 states "no compensation shall be allowed for the first seven (7) calendar days of disability resulting from an injury…but, if the injury results in disability of more than fourteen (14) days, compensation shall be allowed from the date of the disability." So, if you are written out of work by an authorized treating physician or placed on light duty restrictions that your job cannot accommodate, the carrier begins owing weekly benefits on the eighth (8^{th}) day. During that initial period, you should use sick days or vacation days to keep your pay steady. But, if you remain out of work for a total of fourteen (14) days, the employer will owe you back benefits for those first seven (7) days. Once started, your benefits are supposed to continue while under authorized medical care or until light duty restricted work is offered by the employer.

What if you cannot do the light duty work?

SC Code of Laws Section 42-9-190 states "if an injured employee refuses employment procured for him suitable to his capacity and approved by the Commission, he shall not be

entitled to any compensation at any time during the continuance of such refusal." We see this situation in a lot of cases. Doctors often return injured workers back to "light duty" restrictions too soon, And then, employers claim to have such work when, in fact, they do not. Many claimants are simply put back on their regular job. Also, while still on light duty, injured employees are still prescribed narcotic pain medications. If they take them, they risk being fired. This is a very difficult dilemma without an easy answer. So what can you do?

Our first advice is to tell the doctor there are no "light duty jobs" and that you still need your pain medication to cope. If that approach fails, you will have to show up at work and try your best. If you still feel the job is too much, you will have to go home and risk your benefits being stopped. But at a minimum, you have to document your best efforts to attempt to comply.

Chapter Six
"Maximum Medical Improvement"

This is a key phrase that has both medical and legal significance. From a medical standpoint, it means the curative medical treatment is over, and you are "as good as you're going to get." If you have more than one treating doctor, all

have to release you from further care before we turn to resolving your case. For example, the orthopedic surgeon may finish their portion while you are still under the care of a neurologist. And in other cases, the "authorized treating physician" may say you're at MMI, but more treatment is recommended after an "independent medical evaluation." These disputes may have to be resolved at a hearing. However, the Commission is usually very receptive to any reasonable recommended procedure or treatment. Once all physicians and/or the Commission agree the injured worker has reached MMI, the next step is to determine any "permanent partial disability."

Chapter Seven
Impairment Rating / Disability Award

After a doctor finds you at maximum medical improvement, they will determine if you have any "permanent partial impairment" and to what degree or percentage. By its description, this term means you will have lifelong or permanent effects from your injury. So how do they come up with a percentage?

In many cases, the treating physician will do some range of motion and limitations testing in the examining room. For more serious cases, a formal "Functional Capacities Evaluation" (FCE)

may be ordered. In either situation, the doctor will ultimately use the American Medical Association's Guide to the Evaluation of Permanent Disability book and assign a percentage of impairment to the particular body part injured. For example, a usual impairment rating following a microdiskectomy back surgery is 5-15% permanent partial impairment (PPI) to the back. While a more serious fusion procedure might result in a 15-25% PPI rating. And, in some cases, a treating doctor will give a "whole person" rating, but the Commission usually converts that rating to the back. So does the doctor control what you get at a hearing? No.

Doctors give "impairment ratings" but the Commission makes "disability awards. The impairment rating is just one factor that the Commission considers. In addition, a hearing Commissioner will also look at your age, education level, prior work history, any permanent work restrictions, as well as any future medical treatment recommended. As a result, your "disability award" is usually higher than the initial impairment rating. Also, the Commission can order ongoing care such as continuing prescription medication or other followup treatment. And finally, any "prosthetic devices" implanted, such as plates, screws, rods, artificial disks or joints, are covered for your

lifetime subject to certain restrictions.

Chapter Eight
Permanent Partial / Total Disability

There are potentially three (3) different options for permanent disability once released from further medical treatment (maximum medical improvement). As this final stage involves money, this is the most important aspect to many folks who are injured on the job.

I.

The first, and most common option, is where someone injured only one body part. So how does this work? Basically, the human body is divided into "scheduled members" and assigned a certain value. At the end of medical care, the treating physician gives a percentage of loss, or *impairment rating*. That rating is then applied to the total value of the affected body part to calculate an exact dollar value based on the claimant's compensation rate.

For example, total loss of a shoulder is worth 300 weeks of compensation. If a doctor assigns a 10% impairment rating, that figure would represent 30 weeks (10% of 300 weeks) of compensation. If the claimant's compensation rate is $350.00 per week, the rating would then

be worth $10,500.00 (30 weeks x $350.00). That's the value of the impairment rating only. Then, your lawyer will negotiate a disability award with the carrier or their lawyer using the other factors. Experience counts here.

Section 42-9-30:

"In cases included in the following schedule, the disability in each case is considered to continue for the period specified and the compensation paid for the injury is as specified:

(1) for the loss of a **thumb** sixty-six and two-thirds percent of the average weekly wages during sixty-five weeks;

(2) for the loss of a **first finger**, commonly called the index finger, sixty-six and two-thirds percent of the average weekly wages during forty weeks;

(3) for the loss of a **second finger**, sixty-six and two-thirds percent of the average weekly wages during thirty-five weeks;

(4) for the loss of a **third finger**, sixty-six and two-thirds percent of the average weekly wages during twenty-five weeks;

(5) for the loss of a **fourth finger**, commonly

called the little finger, sixty-six and two-thirds percent of the average weekly wages during twenty weeks;

(6) the loss of the first phalange of the thumb or any finger is considered to be equal to the loss of one half of such thumb or finger and the compensation must be for one half of the periods of time above specified;

(7) the loss of more than one phalange is considered the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

(8) for the loss of a **great toe**, sixty-six and two-thirds percent of the average weekly wages during thirty-five weeks;

(9) for the loss of one of the toes other than a great toe, sixty-six and two-thirds percent of the average weekly wages during ten weeks;

(10) the loss of the first phalange of any toe is considered to be equal to the loss of one half of such toe and the compensation must be for one half the periods of time above specified;

(11) the loss of more than one phalange is

considered as the loss of the entire toe;

(12) for the loss of a **hand**, sixty-six and two-thirds percent of the average weekly wages during one hundred and eighty-five weeks;

(13) for the loss of an **arm**, sixty-six and two-thirds percent of the average weekly wages during two hundred twenty weeks;

(14) for the loss of a **shoulder**, sixty-six and two-thirds percent of the average weekly wages during three hundred weeks;

(15) for the loss of a **foot**, sixty-six and two-thirds percent of the average weekly wages during one hundred forty weeks;

(16) for the loss of a **leg**, sixty-six and two-thirds percent of the average weekly wages during one hundred ninety-five weeks;

(17) for the loss of a **hip**, sixty-six and two-thirds percent of the average weekly wages during two hundred eighty weeks;

(18) for the loss of an **eye**, sixty-six and two-thirds percent of the average weekly wages during one hundred forty weeks;

(19) for the complete **loss of hearing** in one ear, sixty-six and two-thirds percent of the average weekly wages during eighty weeks; and for the complete loss of hearing in both ears, sixty-six and two-thirds percent of the average weekly wages during one hundred sixty-five weeks, and the commission, by regulation, shall provide for the determination of proportional benefits for total or partial loss of hearing based on accepted national medical standards;

(20) total loss of use of a member or loss of vision of an **eye** is considered as equivalent to the loss of the member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye is the proportion of the payments provided in this section for total loss as such partial loss bears to total loss;

(21) for the loss of use of the **back** in cases where the loss of use is forty-nine percent or less, sixty-six and two-thirds percent of the average weekly wages during three hundred weeks. In cases where there is fifty percent or more loss of use of the back, sixty-six and two-thirds percent the average weekly wages during five hundred weeks. The compensation for partial loss of use of the back shall be such proportions of the periods of payment herein

provided for total loss as such partial loss bears to total loss, except that in cases where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under Section 42-9-10(B). The presumption set forth in this item is rebuttable;

(22) for the total or partial loss of, or loss of use of, a member, organ, or part of the body not covered in this section and not covered under Section 42-9-10 or 42-9-20, sixty-six and two-thirds of the average weekly wages not to exceed five hundred weeks. The commission, by regulation, shall prescribe the ratio which the partial loss or loss or partial loss of use of a particular member, organ, or body part bears to the whole man, basing these ratios on accepted medical standards and these ratios determine the benefits payable under this subsection;

(23) proper and equitable benefits must be paid for serious permanent disfigurement of the face, head, neck, or other area normally exposed in employment, not to exceed fifty weeks. Where benefits are paid or payable for injury to or loss of a particular member or organ under other provisions of this title, additional benefits must not be paid under this item, except that disfigurement also includes compensation for serious burn scars or keloid

scars on the body resulting from injuries, in addition to any other compensation."

Regulation 67-1101. Total or Partial Loss or Loss of Use of a Member, Organ, or Part of the Body.

A. This regulation does not include injury to the many bodily systems, organs, members, and anatomical parts for which compensation is payable due to disability or serious disfigurement under Section 42-9-10 and Section 42-9-20.

B. This schedule of organs, members, and bodily parts lists prominent parts of the anatomy subject to occupational injury and is not complete. The value of an organ, member, or bodily part not included may be determined in accordance with the American Medical Association's "Guide to the Evaluation of Permanent Impairment", or any other accepted medical treatise or authority. Compensation shall be payable shall be payable for total loss, permanent partial loss, or loss of use of a member, organ, or part of the body when compensation is not otherwise payable.

C. For total loss, partial loss, or loss of use of an organ, member, or body part listed in this regulation, disability shall be deemed to

continue for the minimum period specified, if applicable. In cases involving impairment and disability in excess of the minimum period specified for partial loss of or loss of use of an organ, member, or bodily part, compensation shall be payable in such proportion as disability bears to the maximum number of weeks provided in this regulation. The maximum period of compensation for a combination of injuries is the legislative criterion of five hundred weeks.

Regulation 67-1103. Amputation of Finger or Toe.

A. The amputation of any portion of the bone of the distal phalange of a finger or toe to a point opposite the base of the nail is deemed the loss of one-fourth of the finger or toe.

B. Amputation below the base of the nail of the bone in the distal phalange is deemed loss of one-half of a finger or toe.

Regulation 67-1105. Loss of Vision.

The only points to be made here is that loss of vision and hearing are very specific and dependent upon testing results. There is very little subjectivity involved in ratings

calculations. Also, when dealing with amputations, it is either "half or whole." Ratings assigned by physicians are not of much use given the clear directive of this Regulation.

II.

A second possible option in determining permanent disability involves cases where you injure more than one body part, you are able to return to some type of job, but you are not able to make the same wages as before the accident. You are not permanently and totally disabled, but your earning capacity is now significantly less. In these cases, you can seek an award equal to the difference in pay for up to 340 weeks. This type of case is largely a battle of vocational experts to show what your actual wage loss is.

SECTION 42-9-20. Amount of compensation for partial disability.

Except as otherwise provided in Section 42-9-30, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of the difference between his average weekly wages

before the injury and the average weekly wages which he is able to earn thereafter, but not more than the average weekly wage in this State for the preceding fiscal year. In no case shall the period covered by such compensation be greater than three hundred forty weeks (340) from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall not be deducted from a maximum period allowed in this section for partial disability.

III.

The final, and most serious, permanent disability award is permanent and total disability. Fortunately, these cases are rare as anyone found to be PTD is truly disabled for life and will need ongoing medical treatment and benefits. Under the statute, medical treatment continues until the person is accepted on Social Security Disability. However, weekly benefits are capped at 500 weeks unless the person is blinded, is paraplegic or quadriplegic, or suffers a physical brain injury. In these cases, the injured worker gets both lifetime medical and weekly benefits.

SECTION 42-9-10. Amount of compensation for total disability; what constitutes total

disability.

(A) When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages, but not less than seventy-five dollars a week so long as this amount does not exceed his average weekly salary; if this amount does exceed his average weekly salary, the injured employee may not be paid, each week, less than his average weekly salary. The injured employee may not be paid more each week than the average weekly wage in this State for the preceding fiscal year. In no case may the period covered by the compensation exceed five hundred weeks except as provided in subsection (C).

(B) The loss of both hands, arms, shoulders, feet, legs, hips, or vision in both eyes, or any two thereof, constitutes total and permanent disability to be compensated according to the provisions of this section.

(C) Notwithstanding the five-hundred-week limitation prescribed in this section or elsewhere in this title, any person determined to be totally and permanently disabled who as a

result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the five-hundred-week limitation and shall receive the benefits for life.

Chapter Nine
Mandatory Mediation

Mediation is now mandatory in most cases, including civil, family, and workers' compensation. I participated in my first mediation over twenty years ago. At the time, this was a new experience, but it has since become mainstream and very effective at getting cases resolved. Now, only if all else fails does a case go all the way to hearing or trial. So how does mediation work?

After appropriate discovery and depositions, both sides of a case meet along with a third party, neutral mediator. While there are lists of available mediators, most experienced lawyers have their "favorites.". Many mediators are former judges or defense attorneys. They truly have no stake in the outcome of any case but are motivated to help the parties reach agreement. For mediation to work, *both* sides have to compromise. That means the insurance carrier has to pay more than they want, and the injured worker has to accept less. However,

both sides are trying to anticipate what a Commissioner would award if the case went to hearing.

The biggest advantage of mediation is time. In the old days, lawyers would negotiate over the phone or email with offers and demands. This process could take days or usually weeks as they went back and forth. With mediation, everyone involved in the case, including the adjuster, is focused on reaching agreement. If no settlement, both sides have to wait for a hearing which can take additional weeks. In addition, either side has the right to appeal a hearing decision which could take months or close to a year. As a result, most lawyers (and clients) are huge supporters of mediation as it gets cases done. After all, very few people want their cases to drag on for years.

Chapter Ten
Hearings / Appeals

Although hearings are somewhat informal in comparison to other courts, they are still legal proceedings with a judge (Commissioner), court reporter, and witnesses. Medical evidence is submitted without testimony, unless there are depositions taken of treating physicians. Witnesses are called to the stand to testify and are subject to cross-examination. In addition,

other expert witness reports can be included for consideration as well.

What is missing is a jury. There is no right to a jury trial in workers' compensation cases. As a result, there is also no "opening statement" or "closing argument." Instead, the Commissioner reviews the written medical records and considers the hearing testimony in making a determination on the issue(s) presented. Sometimes, only a partial dispute is in controversy, such as a medical procedure. Other times, the entire claim is disputed.

For admitted cases where the only issue is permanency, hearings are expected to take approximately 15 minutes. In contested cases, the Commission schedules approximately 30 minutes unless more time is requested. Unlike other cases where the wait for trial can be up to a year or longer, workers' compensation cases get heard within a matter of months. Also, you are given a date certain with a specific time as opposed to being on standby for trial.

After carefully considering all of the evidence presented, the Hearing Commissioner will issue a Decision and Order with Findings of Fact and Rulings of Law. Instead of a money award like in civil cases, the Commissioner will assess a percentage of disability to the injured body

part. Your lawyer will then calculate the exact dollar amount. So what if either party disagrees with the Order? You have the right to file a Notice of Appeal to the Full Commission within fourteen (14) days. Your case will then be reviewed *de novo* by three (3) different Commissioners based on the record and oral argument.

A Full Commission review deals with both disputed issues of fact and law. Generally, the Full Commission panel will defer to the Hearing Commissioner on issues of credibility as they would have heard the live testimony and personally observed the demeanor of witnesses. On appeal, there is no more testimony. Instead, written appeal briefs are submitted and then argued by lawyers or injured workers, if unrepresented.

SC Code of Laws Section 42-17-40 addresses the conduct of hearings and awards. That law states: "(A) The commission or any of its members shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue, must be filed with the record of the proceedings and a copy of the award must

immediately be sent to the parties in dispute…"

SC Code of Laws Section 42-17-50 addresses review and rehearing by Commission and states, "if an application for review is made to the Commission within fourteen (14) days from the date when notice of the award shall have been given, the Commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award.

The next level of appeal is to the South Carolina Court of Appeals and possibly even the South Carolina Supreme Court. However, after the Full Commission appeal, only errors of law are considered. All findings of fact are deemed conclusive and cannot be raised on further appeal.

SC Code of Laws Section 42-17-60 mandates: "the award of the commission, as provided in Section 42-17-40, if not reviewed in due time, or an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be

sent by registered mail of the award, but not after, whichever is the longest, may appeal from the decision of the commission to the court of appeals." There are also provisions for payment of an award during further review, possible accrued interest, and even sanctions for frivolous appeals.

Chapter Eleven
Third Party Claims

The *only* option to "sue" an employer in South Carolina is to file a workers' compensation claim. Fault is not an issue. Whether the employer was or was not negligent in causing an accident or injury does not matter. They are protected from private lawsuits. That statute is as follows:

SC Code of Laws Section 42-1-540 provides "the rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death." However, if an accident is the

result of someone's negligence that is not affiliated with the injured worker's employer, there may be a separate claim for a "third party action."

SC Code of Laws Section 42-1-560 addresses the "right to compensation not affected by liability of third party; rights and remedies against third party" and states, "(a) the right to compensation and other benefits under this Title shall not be affected by the fact that the injury or death is caused under circumstances creating a legal liability in some person, other than the employer or another person exempt from liability under Section 42-1-540 to pay damages therefor, the person so liable being hereinafter referred to as the third party." The most common example of a workers' compensation claim with a third party action is when someone is involved in an automobile accident while on the job. Another common example is when someone is injured while working with a machine that is negligently maintained by a separate entity.

In these type of cases, the first priority is to finish the workers' compensation case first. All medical treatment and lost time benefits will be paid by the workers' compensation carrier. There will be a permanent impairment rating.

At that point, the final "fixed damages" will be determined, and the only element left to be resolved will be "pain and suffering." Of course, the workers' compensation carrier will have a "lien" on any benefits recovered from a third party and must be negotiated, if possible, before dealing with the third party insurance carrier. Also, if you pursue your third party action improperly, you can be found to have "elected your remedy" and forego any workers' compensation benefits.

Chapter Twelve
Occupational Disease Claims

These types of workers' compensation claims are the most complex from both a medical and legal perspective. They usually involve exposure to dangerous chemicals or other toxins. Here, an injured worker's prior medical history and current lifestyle choices (such as smoking) are scrutinized closely. The defense will be to show that the current disease or condition is the result or caused by something other than the employment. Consequently, there is usually a "battle of the experts." In addition, there are strict time deadlines and other hurdles to overcome in these claims. The relevant statute is as follows:

SC Code of Laws Section 42-11-10 provides

“(A) "Occupational disease" means a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged. A disease is considered an occupational disease only if caused by a hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of continuous exposure to the normal working conditions of that particular trade, process, occupation, or employment. In a claim for an occupational disease, the employee shall establish that the occupational disease arose directly and naturally from exposure in this State to the hazards peculiar to the particular employment by a preponderance of the evidence.

(B) No disease shall be considered an occupational disease when it:

(1) does not result directly and naturally from exposure in this State to the hazards peculiar to the particular employment;

(2) results from exposure to outside climatic conditions;

(3) is a contagious disease resulting from exposure to fellow employees or from a hazard to which the workman would have been equally exposed outside of his employment;

(4) is one of the ordinary diseases of life to which the general public is equally exposed,

unless such disease follows as a complication and a natural incident of an occupational disease or unless there is continuous exposure peculiar to the occupation itself which makes such disease a hazard inherent in such occupation;
(5) is any disease of the cardiac, pulmonary, or circulatory system not resulting directly from abnormal external gaseous pressure exerted upon the body or the natural entrance into the body through the skin or natural orifices thereof of foreign organic or inorganic matter under circumstances peculiar to the employment and the processes utilized therein; or
(6) is any chronic disease of the skeletal joints.

(C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed healthcare provider.

(D) No compensation shall be payable for any occupational disease unless the employee suffers a disability as described in Section 42-9-10, 42-9-20, or 42-9-30.

As you can readily see, this is a very complex area of law where legal and medical experience is going to make a real difference in the

outcome of the case. Certainly, at a minimum, one should consult a seasoned workers' compensation attorney who can retain the necessary experts to prove the required elements of this type claim.

Frequently Asked Questions

Will I lose my job if I hire an attorney?

These are still very difficult economic times. If you do get hurt at work, you're understandably reluctant to hire a lawyer or pursue a claim. No one wants to risk a good job, especially these days. Unfortunately, you're in a real trap. If you don't report an accident and later learn you have something more serious than first thought, you may lose the right to pursue a claim later. Here's the reality. If your employer typically fires someone when they get hurt, it is even more important that you consult an attorney as soon as possible. We can help you, but you have to get us involved early.

What if I have a pre-existing injury or medical condition?

It doesn't matter. Whether it is a "new injury" or an "aggravation of a prior injury or

condition," the claim is still compensable. The relevant statute provides:

SC Code of Laws Section 42-9-35 states "(A) The employee shall establish by a preponderance of the evidence, including medical evidence, that: (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury…(D) The provisions of this section apply whether or not the employer knows of the preexisting permanent disability." The last part of this statute complies with the federal law Americans with Disabilities Act (ADA) that prohibits employers from denying employment based on previous injuries or disabilities. Employers are not allowed to ask about prior injuries or claims. Only after you are offered a job can they require a pre-employment physical examination. At that point, you should be absolutely honest about any conditions or surgeries.

Can my claim be denied based on a drug test?

It depends. For example, if you report to work impaired and are injured because of the impairment, benefits will be denied. However, the accident must be proximately caused by or

result from the impairment. Even if you are "intoxicated" and something hits or falls on you, then that claim would arguably be compensable under SC law. Additionally, a "positive" drug test is not always fatal to a claim. As we all know, these urine tests are not always reliable, and you may need to get your own independent testing to refute such finding. The relevant statute provides as follows:

SC Code of Laws Section 42-9-60 states, "no compensation shall be payable if the injury or death was occasioned by the intoxication of the employee…in the event that any person claims that the provisions of this section are applicable in any case, the burden of proof shall be upon such person."

Can my medical records be given to my employer and insurance carrier without my permission?

Yes. But arguably not all of your past medical records is subject to disclosure. By seeking benefits, you give up your right to privacy for treatment relating to the claim. This area gets a little confusing given the HIPPA regulations. Regardless of the right, employers and adjusters still need to be very mindful of how such private, personal information is

disseminated to others. The relevant statute provides:

SC Code of Laws Section 42-15-95 states "(A) any employee who seeks treatment for any injury, disease, or condition for which compensation is sought under the provisions of this title shall be considered to have given his consent for the release of medical records relating to such examination or treatment under any applicable law or regulation. All information compiled by a health care facility, as defined in Section 44-7-130, or a health care provider licensed pursuant to Title 40 pertaining directly to a workers' compensation claim must be provided to the insurance carrier, the employer, the employee, their respective attorneys or certified rehabilitation professionals, or the South Carolina Workers' Compensation Commission, within fourteen (14) days after receipt of written request.

Should I hire an experienced WC lawyer?

It depends. If your injury is not serious or you expect to heal completely, then you probably do not need an attorney. Hopefully, this eBook has answered a lot of your questions. However, if you have something serious, such as surgery or prosthetic devices implanted, then you absolutely should consult with an experienced

workers' compensation attorney to thoroughly review your particular circumstances. This information is very basic. The actual laws are much more complex and confusing. We get involved in our client's cases as soon as possible in order to guide treatment and anticipate problems. Please don't make the mistake of calling us after it is too late.

What does it cost to consult an attorney?

The initial consultation is usually free. At our firm, we are happy to sit down with you and review your case and options. If you decide to hire us, we charge a "contingency fee" which means we only get paid if we are successful. You don't have to pay any money out of pocket and owe us nothing if we do not win your case. If we do prevail, attorney fee is up to one-third (1/3) of any amount recovered. However, we charge a 25% fee if we are able to resolve your case without having to request a hearing. Of course, you make all decisions on your case and whether to accept a settlement offer or go to a hearing.

In addition to *attorney fees*, there will be *costs* which typically include medical records, deposition charges, filing fees, and, in some cases, independent medical evaluations. All fees

and costs must be approved by the South Carolina Workers' Compensation Commission.

How to choose a workers' compensation lawyer out of so many?

Many people just ask a friend, family member, or even a coworker. That's always a good start, but we encourage you to do your own research. This first decision is critical to your case. We respectfully suggest you carefully compare the actual credentials and real experience in handling workers' compensation cases. Interview several attorneys and ask how many cases they have tried vs. settled. Ask how long and how often they handle workers' compensation files. Is this a regular part of their practice or do they just take a few cases each year.

Then, after you are satisfied that all of your questions and concerns have been answered, you should hire the best, most qualified lawyer in whom you have the most confidence and who puts you at ease.

After you have had an opportunity to review our credentials, please call us for a personal

interview. We would be honored to sit down and review the particular circumstances of your case. You are going to feel better after getting some answers and knowing better what to expect. Call us now to get started. You focus on getting better while we focus on your case.

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This publication is written to provide general information about workers' compensation injury claims in South Carolina. It is not intended to constitute legal advice and does not create an

attorney-client relationship. For more detailed information and specific legal advice, call to schedule an appointment to discuss your case.