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Workers' Compensation Commission

Report of the Presiding Officer, Chairman T. Scott Beck Proposed Changes to Regulation 67-1605 Document No. 4399

November 5, 2013

Pursuant to Section 1-23-111 of the SC Code of Laws, 1976 the following is a report subsequent to the Public Hearing on October 29, 2013 at which time and place the Commission received public comment on the proposed changes to Regulation 67-1605. This report includes the findings as to the need and reasonableness of the proposed changes.

Background

The Commission determined a need for considering the methodology used to calculate net present value of lump sum payments in June 2012. An ad hoc advisory committee of stakeholders was formed to review the current and alternative methodologies for calculating the net present value of lump sum payments to ensure fairness to the claimants and the employers.

At the regular business meeting on April 15, 2013, the Commission approved the recommendation from the Commuted Value Discount Advisory Committee to amend the language in R 67-1605 Lump Sum Payment. The Notice of Drafting was published in the June 28 issue of the *State Register*. Deadline to receive comments on the Notice of Drafting was 5:00 p.m. on July 25, 2013. No comments were received on the Notice of Drafting.

At the regular business meeting on August 12, 2013, the Commission approved the language of the proposed regulation. The proposed regulation was published in the September 27, 2013 issue of the *State Register*. Deadline to receive comments on the proposed regulation was 5:00 p.m. on Monday, October 28, 2013. The Commission received two comments via email.

The proposed change (new language is underlined):

67-1605. Lump Sum Payment.

A. The employer's representative shall pay, in lump sum, a settlement or award which is less than one hundred weeks. When a settlement or award is more than one hundred weeks, the Hearing

Commissioner may order a lump sum payment or the claimant may request a lump sum payment by filing a Form 24, Application for Lump Sum Payment.

B. If the claimant is not represented by an attorney, the claimant may request lump sum payment by filing a Form 24 with the Commission's Claims Department. The department will contact the employer's representative to inquire if it consents to payment in lump sum.

C. An attorney for the claimant must request the employer's consent to payment in lump sum payment prior to filing a Form 24.

(1) If the parties agree to payment in lump sum, the claimant's attorney may file with the Claims Department a Form 24 and attach to the Form 24 a signed agreement for payment in lump sum.

(2) If the employer's representative does not consent to payment in lump sum, the claimant's attorney may file a Form 24 with the Claims Department and attach a letter stating that the insurance carrier does not consent to the lump sum payment.

(3) The Commission will automatically set a hearing. The parties will be notified according to R.67-607.

D. If the employer's representative consents to payment by lump sum, the Claims Department forwards the Form 24 to the original Hearing Commissioner who reviews the Form 24 and may approve the Form 24 without the appearance of the parties.

(1) If the Commissioner approves the Form 24, he or she signs the Form 24 and the Claims Department commutes the award or settlement to present day value as provided in E below.

(2) The employer's representative is notified of the amount of the lump sum payment.

(3) If the Commissioner does not approve the Form 24, a hearing will be set automatically and the parties notified according to R.67-607.

E. Unless a Commissioner orders otherwise, or unless the settlement or award is less than ten weeks, the insurance carrier receives a discount for payment in lump sum.

(1) To determine the discount, the Commission subtracts the number of weeks already paid from the total number of weeks as awarded.

(2) Weeks that have accrued but are not paid at the time of the commutation are not included in the calculation.

(3) Three weeks of compensation are accrued into the future to allow for processing the Form 24 and issuing the check to the claimant.

(4) The number of accrued weeks are deducted from the total number of weeks due the claimant, resulting in the number of weeks commuted.

(5) The present worth of the remaining weeks is determined according to the discount tables designated by the Commission.

(a) ~~A table based on a discount of~~ Each installment yet to accrue of the first one-hundred weeks of the award shall be discounted at a rate of two percent, per annum on each installment yet to mature ~~The Commission shall publish a present value table showing the conversion factors for zero through one-hundred weeks, is used for less than one hundred weeks.~~

(b) ~~A table based on a discount of five percent per annum on each installment yet to mature is used for more than one hundred weeks.~~ Each installment yet to accrue of weeks one-hundred and one through five-hundred shall be discounted at the yield-to-maturity rate of the Five Year U.S. Treasury Note as published on the first business day after January 1st each year, but in no case shall the discount rate exceed six percent or be less than two percent. The Commission shall publish a present value table showing the conversion factors for weeks one-hundred and one through five-hundred on the first business day following January 1st of each year. The present value table for weeks one-hundred and one through five-hundred published on the first business day following January 1st shall apply to all awards made during the year and until a new present value table is published the following year. The present value of the commutable weeks shall be determined based on the present value tables in effect on the date of the award or settlement.

(c) In the event the Commission makes an award of a partial lump sum in excess of five-hundred weeks in accordance with S.C. Code § 42-9-10(C) and § 42-9-10(D), the discount rate shall be determined on a case by case basis.

(6) Multiplying the present worth of the weeks by the claimant's compensation rate results in the commuted value of the remaining weeks.

(7) Adding the value of the accrued weeks to the commuted value of the remaining weeks results in the total amount due the claimant.

F. The dollar value of a lump sum payment may be requested by writing the Claims Department.

Findings

The Workers' Compensation Commission is the regulatory agency of the State of South Carolina responsible for overseeing and administering the South Carolina Workers' Compensation Act. SC Code Ann. § 42-1-10 et seq. (1976). The Commission has statutory and regulatory authority to promulgate rules and regulations as set forth in § 42-3-30. Pursuant to § 42-17-50 the Commission has the power to conduct a review and rehearing of cases. Pursuant to § 42-9-301, the Commission is authorized to establish the discount rates at not to exceed six percent nor be less than two percent.

Fiscal Impact Statement

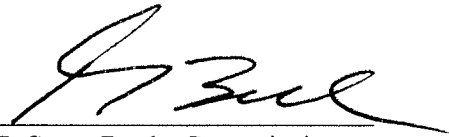
The fiscal impact of the proposed changes to this regulation is \$0.

Statement of Need and Reasonableness

The Workers' Compensation Commission is the regulatory agency of the State of South Carolina responsible for overseeing and administering the South Carolina Workers' Compensation Act. SC Code Ann. § 42-1-10 et seq. (1976). The Commission finds the proposed changes to R 67-1605 are reasonable and necessary to provide a more equitable calculation by using current interest rates for making lump sum payments.

Recommendation

Pursuant to Section 1-23-111 of the SC Code of Laws, I find the proposed changes to R 67-1605 reasonable and direct staff to promulgate the final proposed language for Commission approval at the monthly business meeting on November 18, 2013.



T. Scott Beck, Commissioner

11/15/13

Date