THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner and Chairman for the Panel
R. Michel Campbell, Commissioner
Gene McCaskill, Commissioner

Appellate Case No.: 2022-000581
Case No.: W.C.C. File No.: 1611416

Jon A. Hinson, Employee, Respondent

v.

BS Telecommunications, Employer, and Old Republic Insurance Co., Carrier, Defendants, of which BS Telecommunications is the Appellant.

BRIEF OF RESPONDENT

November 9, 2022

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STATEMENT OF THE CASE

This appeal arises from an Order granting Respondent's Motion To Compel. The parties had entered a Clincher wherein Appellants agreed to pay previously incurred authorized medical expenses. After several attempts to secure payment of the medical expenses failed, Respondent filed a Motion to Compel. The Motion was filed over a year after the Clincher was filed and approved. At the Motion hearing, the Commissioner found Appellants failed to comply with the terms of the approved Clincher by not paying authorized medical expenses for over a year after the Clincher was filed, and also by only paying a portion of the expenses due. Attorney's fees, costs, and fines were imposed against Appellants, in accordance with S.C. Code Ann. §42-3-175. Appellants appealed and the Full Commission affirmed the Single Commissioner's Order in its entirety, except for reducing the fine from $500.00 per day to $30.00 per day. Thereafter, Appellants timely filed this Appeal.

It is undisputed that a Clincher was signed by the parties and properly filed with the Commission on March 23, 2020. The Clincher provided, in pertinent part:

> Employer and Carrier will pay any previously authorized medical expenses to medical providers that were incurred prior to February 13, 2020, but have inadvertently not been paid as of the date of this agreement;

(R. p. 209). Dr. Mullen with Poinsett Psychiatric was Respondent's authorized treating psychiatrist during the course of his claim. (R. p. 191; R. p. 208) By Consent Orders of August 18th, 2017, and November 13th, 2018, Defendants agreed to pay all causally related treatment provided by Dr. Mullen and any out-of-pocket expenses incurred by Respondent related to his psychological care. (R. pp. 190-192) The total amount of authorized medical expenses incurred by Respondent from Dr. Mullen's office prior to February 13, 2020, was $3,825.00. (R. p. 199; R. pp. 215-217) Appellants failed to comply with the Consent Orders and had not yet paid Dr.

Mullen's office for any of his services as of March 23, 2020, the date the settlement was reached. Respondent had paid $3,625.00 of the $3,825.00 owed to Dr. Mullen's office in order to continue his treatment

During the settlement negotiations, Appellants were advised, in writing by Respondent's attorney that Dr. Mullen's authorized medical expenses remained unpaid by Appellants. Appellants acknowledged their adjuster was looking into it. (R. pp. 193-194) Language was then included in the Clincher Agreement addressing payment of authorized medical expenses that had inadvertently not been paid by the Employer and Carrier.

Four months after the Clincher was filed, Respondent's attorney emailed Appellants' attorney again about the authorized medical expenses from Dr. Mullen's office. (R. pp. 195-197) No payments were made.

Respondent's attorney filed a Motion To Compel on March 29, 2021, over one year after the Clincher was filed. (R. pp. 99-109) On or about April 19, 2021, Appellants made their one and only payment to Dr Mullen's office in the amount of $200.00. A hearing was scheduled on Respondent's Motion for April 28, 2021.

At the Motion Hearing, Appellant argued they were only responsible for payment of $200.00 in authorized medical expenses incurred from Dr. Mullen's office. (R. pp. 96-98; R. p. 160; R. pp. 166, line 6-p. 167, line 3) They conceded that they failed to timely comply with all the terms of the Clincher. However, they took the position that attorney's fees, costs, and sanctions should not be imposed against them because: 1) under the terms of the Clincher, Respondent had waived all claims or other recourse against the Appellants and therefore could not seek redress before the Commission; (R. pp. 165-167) 2) the Commissioner had no authority to impose sanctions under §42-3-175 because the Clincher was not an Order (R. p. 159; R. p.

162; R. p. 162, lines 3-25) 3) this was not a case for the imposition of sanctions because during the two weeks prior to the Motion hearing, Appellants had paid $200.00 which was all that they admitted they were responsible to pay; (R. pp. 166-167, R. pp. 172-174) and finally, 4) Appellants argued that, prior to the Motion Hearing, their failure to pay Dr. Mullen's bill was by accident; and Claimant suffered no harm from the one year delay. (R. pp. 168-170)

The Order Imposing Sanctions which is the subject of this appeal, was issued on July 13, 2021. Appellants were ordered to pay the remaining $3,625.00 in authorized medical expenses that Respondent incurred from Dr. Mullen's office; $1,400.00 in attorney's fees; $50.00 in costs; and fines of $500.00 per day from March 23, 2020, to April 12, 2021. April 12, 2021 was the date the $200.00 payment was issued. (R. pp. 17-29)

Appellant timely filed a Form 30, Notice of Appeal. (R. pp. 84-88) A Full Commission Hearing was conducted on January 24, 2022. In its Order of April 20, 2022, the Full Commission affirmed the Single Commissioner's Order in all respects, with the sole exception being that the daily amount of the fine imposed was reduced from $500.00 to $30.00. (R. pp. 3-14) This Appeal followed.

LAW AND ARGUMENT

I. APPELLANTS DID NOT FULLY COMPLY WITH THE AGREEMENT.

Compliance with the Clincher Agreement required payment of authorized medical expenses. The phrasing in question specifically addresses the Employer and Carrier's obligation to pay authorized medical expenses.

> **Employer and Carrier will pay** any previously authorized medical expenses to medical providers that were incurred prior to February 13, 2020, but have inadvertently not been paid as of the date of this agreement.

(R. p. 209 Emphasis added)

Appellants admit that they owed money for authorized medical expenses pursuant to the Clincher. (Appellants' Brief p. 8-9) They admit that Dr. Mullen was an authorized medical provider. (R. p. 208) They admit being contacted about their failure to pay authorized medical expenses to Dr. Mullen's office several months after the Clincher Agreement was filed and approved by the Workers' Compensation Commission. (R. p. 60; R. pp. 195-197) Despite being contacted, they admit continuing in their failure to pay for over a year after the Clincher was filed and approved. Finally, they admit that only after the Respondent filed a Motion to Compel, did they pay $200.00 of the $3,825.00 in authorized medical expenses being sought by Respondent. (R. p. 61; R. p. 160) As such, Appellants have conceded they did not fully comply with the Clincher Agreement. Their argument to the contrary is perplexing.

The total amount of Dr. Mullen's authorized medical expenses incurred prior to February 13, 2020, was $3,825.00. (R. pp. 215-217) The clincher was approved by the Commission on March 23, 2020. (R. p. 207) Appellants paid $200.00 to Dr. Mullen's office on or about April 19, 2021. (R. p. 61) The remaining $3,625.00 had been paid by Respondent in order to continue his care by Dr. Mullen. Appellants argue they were only responsible for $200.00, because it was the only amount that had "inadvertently not been paid." (R. pp. 166, line 21-p. 167, line 3) However, Appellants argument gives no logical meaning to the word "inadvertently".

The Oxford Dictionary, defines inadvertently as "- without intention, accidentally." Consider Appellants had previously entered two Consent Orders agreeing to be solely responsible for Dr. Mullen's bills and identifying him as an authorized medical provider. Pursuant to S.C. Code Ann. §42-15-60, the employer may select the authorized medical provider and "cause to be furnished, free of charge to the employee, any medical care or treatment..."

Only the employer and carrier are financially responsible for providing authorized medical care under the Act. Employees are not responsible for payment of authorized medical care.

In the present case, Appellants had failed to pay Dr. Mullen's authorized medical expenses of $3,825.00 in contravention to the two Consent Orders. At the time the Clincher was entered Appellants had paid $0.00. As such, only Appellants could have "inadvertently" failed to pay Dr. Mullen. Claimant could not "inadvertently" fail to pay a bill that he did not owe and had no duty to pay.

Dr. Mullen was an authorized medical provider. Appellants had specifically agreed to pay Dr. Mullen's authorized medical expenses in two Consent Orders. Appellants failed to pay. Appellants then agreed in the Clincher that they were responsible to pay for authorized medical expenses incurred prior to February 13, 2020 that had inadvertently not been paid. By Respondent paying a portion of the bill owed to Dr. Mullen's office, he did not transform these authorized medical expenses owed by Appellants into something else. The authorized medical expenses that Respondent paid himself, remained authorized medical expenses that had "inadvertently" not been paid by the Appellants.

It is difficult to follow Appellants' reasoning. First, Appellants concede that they owed another $200.00 in authorized medical expenses pursuant to the terms of the Clincher. However, Appellants then argue they were not responsible for payment of any money for authorized medical expenses pursuant to the terms of the Clincher. While there is extensive release language contained in the Clincher, that language does not alter the other language contained in the Clincher where Appellants agreed to pay for authorized medical expenses that they had inadvertently failed to pay previously. Appellants position is not plausible.

The Latin phrase Unius est exclusio alterius, means "the expression of one thing is the exclusion of the other." It is not applicable to this matter. The Clincher expressly addresses payment of authorized medical expenses incurred prior to February 13, 2020. That expressed term cannot then be excluded by the additional express term in the clincher that addresses mileage reimbursement. This argument is without merit.

The Hearing Commissioner correctly found that Appellant's failed to pay $200.00 that they admittedly owed, for over 13 months after the Clincher was filed, and then only after a Motion to Compel was filed by Respondent. (R. p. 26). Further, the Hearing Commissioner correctly found Appellants owed and willfully refused to pay the other $3,625.00, that they had "inadvertently" failed to pay at the time the Clincher was entered. (R. p. 26). Both of these Findings are supported by Substantial Evidence in the record. Moreover, the Commission found each of these Findings independently supported its imposition of penalties pursuant to §42-3-175. (R. pp. 26-28)

II. THE PAROL EVIDENCE RULE DOES NOT APPLY IN WORKERS' COMPENSATION.

As part of the Clincher, Respondent bargained for and expected payment of all the authorized medical expenses he incurred with Dr Mullen's office. At the Motion Hearing, email correspondence and prior Consent Orders introduced by Respondent clearly reflected this was the understanding of the parties at the time the Clincher was entered. (R. p. 24; R. pp. 27-28).

Appellants argue that the introduction of this evidence was inappropriate, based on the Parol Evidence Rule. Notably, Appellants do not cite a Workers' Compensation case related to this rule. This is because one does not exist.

First, Appellants reliance on this rule is misplaced. According to *Hamilton v. Bob Bennett Ford*, 339 S.C. 68, 528 S.E.2d 667 (2000):

> South Carolina Rules of Evidence do not apply in proceedings before the Workers' Compensation Commission. S.C. Code Ann. § 1-23-330(1) (1986 & Supp. 1999) (except in proceedings before the Workers' Compensation Commission, rules of evidence apply in contested matters before an agency); see also Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940) ("great liberality is exercised in permitting the introduction of evidence in proceedings under Workmen's Compensation Acts.").

The Hearing Commissioner correctly took the email correspondence and Consent Orders into consideration.

Secondly, were the Parol Evidence Rule applicable in Workers' Compensation cases, it would not exclude the evidence in the present case. The Parol Evidence Rule states that "where the terms of a written instrument are unambiguous, clear and explicit, extrinsic evidence of statements made contemporaneously with or prior to its execution are inadmissible to contradict, vary or explain its terms." *Ray v. South Carolina Nat'l. Bank*, 281 S.C. 170, 314 S.E.2d 359 (1984).

At the hearing, and on appeal, the parties have disagreed over the meaning of certain language in the Clincher. Specifically, regarding the issue of whom was responsible for payment of authorized medical expenses, the phrase "have inadvertently not been paid" was in dispute. The Court of Appeals has held that extrinsic evidence should be allowed in cases such as this one where ambiguous language is in dispute. "Ambiguity may arise when all or part of the agreement is 'capable of being understood in more ways than one, an agreement obscure in meaning through indefiniteness of expression, or having a double meaning.' *Ebert v. Ebert,* 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995). The Hearing Commissioner allowed the email correspondence and prior Consent Orders to be introduced, in part, to clarify the ambiguity regarding the meaning of the phrase in question, and as evidence of the parties' intent.

Additionally, the Hearing Commissioner noted the Consent Orders were already contained in the Commission's file. (R. p. 151) These documents reflected which medical providers had been authorized and when. Appellants' counsel agreed at the Hearing before the Single Commissioner that the Consent Orders were contained in the Commissioner's file and therefore admissible.

At a minimum, Appellants conceded at the Single Commissioner hearing, the Full Commission hearing, and in their brief on appeal, that they owed $200.00 in authorized medical expenses for over a year and failed to pay it until Respondent's Motion was filed. The Hearing Commissioner did not need any extrinsic evidence to determine Appellants failed to timely pay the authorized medical expenses in accordance with the Clincher. Appellants admitted it. As such, even if the Parol Evidence Rule were applicable, which it is not, it would have been harmless error. *Adams v. Marchbanks*, 253 S.C. 280, 170 SE 2d 214 at 215 (1969).

Appellants also argue that the Clincher is controlling and represents the Law of the Case. It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling." *Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997). "Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal." Id. "The unchallenged ruling, right or wrong, is the law of the case and requires affirmance." Id. *See also Unisun Ins. v. Hawkins*, 342 S.C. 537, 544, 537 S.E.2d 559, 563 (Ct.App.2000) (stating an unappealed ruling is the law of the case which the appellate court must assume was correct).

The fact that the Clincher represents the Law of the Case does not render the Consent Orders inadmissible as evidence. However, Appellants are correct that neither party appealed the properly filed approved Clincher. Per Appellants' argument, the Clincher became an

unappealed ruling of the Commission and represents the Law of the Case. As a result, by admitting that the Clincher is an unappealed ruling or order of the Commission, Appellants contradict and appear to have abandoned their argument that the Clincher is not an order of the Commission. Additionally, Appellants appear to contradict and abandon their argument that 42-3-175 does not apply to clinchers, on the grounds that clinchers are not orders.

Defendants next argue that it was improper for the Hearing Commissioner to allow the email correspondence to be introduced because it contained prior settlement negotiations. This argument is also without merit. Settlement negotiations are inadmissible to establish liability, but once liability is established and a settlement is reached, they are admissible on the issue of what was agreed to in the settlement. Our Supreme Court in *Neal v. Clark*, 199 S.C. 316, 19 S.E.2d 473 (1942), held:

> It is of course true that the law favors compromises and refuses to allow testimony as to negotiations and offers of compromise. But where a settlement has been effected and releases executed and delivered, this fact does not admit liability, but presents a question of fact for the jury as to whether liability is admitted or not. Fayssoux v. Seaboard Air Line Railway, 109 S.C. 352, 96 S.E. 150.

The e-mail of March 11, 2020, makes no reference to a $200.00 balance, or the parties understanding of the exact amount owed to Dr. Mullen's office. (R. pp. 193-193) Appellants contacted Dr. Mullens office in April of 2021 to inquire about the amount of money owed. (R. p. 158) However, the email does confirm Appellants were aware they owed authorized medical expenses related to Dr. Mullen's case.

Appellants argue that a large portion of the amount paid by Respondent to Dr. Mullen was paid at a time when the psychological portion of the claim was denied. First, this is not true. The 2017 Consent Order was issued shortly after the Respondent's first visit with Dr. Mullen.

(R. pp. 190-193; R. pp. 215-217) Secondly, it is irrelevant because Appellants agreed to pay all of Respondent's medical expenses incurred from Dr. Mullen and agreed Dr. Mullen was an authorized provider. The timing of Respondent's payments to Dr. Mullen have no bearing on Appellants failure to pay. However, it does draw attention to the striking similarity between Appellants failure to pay Dr. Mullen's authorized medical expenses in compliance with the two Consent Orders, and their failure to pay in compliance with the Clincher.

III. A SIGNED CLINCHER IS APPROVED UPON BEING PROPERLY FILED WITH THE COMMISSION WITHOUT A COMMISSIONER'S SIGNATURE.

As noted above, Appellants appear to have abandoned their Argument that the Clincher is not an order since it is the Law of the Case. Assuming *arguendo* that Appellants have not abandoned this argument it is also without merit.

First, Appellants miscite S.C Code Ann. §42-9-390. Appellants incorrectly argue, "the statute states that a settlement agreement must only be filed with the commission if the employee is represented." (Appellants' Brief, p. 18). This is incorrect. S.C. Code Ann.§42-9-390 expressly requires the employer file a copy of the settlement agreement with the Commission, whether the claimant is represented or not. It is undisputed that the Clincher herein was properly filed with the Commission.

Next, Appellants wrongly argue that this Clincher was not approved by the Commission. This reasoning is flawed because it ignores the clear wording of S.C. Code Reg. 67-803 interpreting 42-9-390. Pursuant to S.C. Code Reg. 67-803, B, (2), the method in which the commissioner provides approval of a Settlement Agreement (Clincher), when each party is represented by an attorney, is as follows:

Settlement by Agreement and Final Release.

. . .

B. An Agreement and Final Release **shall be approved** as follows:

. . .

(2) If the claimant is represented by an attorney, the claimant, his or her attorney, and the attorney for the employer's representative sign the Agreement and Final Release. The Agreement and Final Release shall be filed with the Claims Department.

(a) The attorney for the employer's representative files the original and two copies of the proposed agreement and final release with the Claims Department.

(b) An official copy of the Agreement and Final Release is returned to the attorney for the employer's representative.

(c) The employer's representative shall provide the claimant an official copy of the Agreement.

C. The Commission shall not approve an Agreement and Final Release that is not fairly made and in accordance with the Act. **An approved Agreement and Final Release is binding.** The employer's representative shall pay compensation according to its terms.

(*Emphasis added*).

Per S.C. Code Reg. 67-801, Settlement of the Claim, General.

F. An official copy of the settlement is **approved and certified by the Commission as binding**."

(*Emphasis added*).

It is undisputed that both parties' counsel and the Claimant signed the Clincher. It is undisputed that the signed Clincher was duly filed with the Commission, along with the necessary filing fee. It is undisputed that an official copy of the Clincher was provided to the parties by the Commission. Defendants do not argue that the Clincher was not signed and filed in accordance with these Regulations.

Following the 2007 amendment of §42-9-390, it is no longer necessary for a Clincher in which the claimant is represented by counsel, to be approved *by a Commissioner.* Now,

approval is ministerial rather than judicial. By compliance with Regulations 67-801 and 67-803 this Clincher was approved and certified binding by the Commission without the need for a Commissioner's signature. The Clincher became an Order of the Commission once filed and approved, by operation of law.

Our Supreme Court addressed the enforcement of Workers' Compensation agreements and the imposition of penalties in *Singleton v. Young Lumber Co.*, 236 S.C. 454, 114 S.E.2d 837 at 841 (S.C. 1960). There the Court noted:

> The next question for determination is whether the Trial Judge committed error in affirming the Commission in assessing a ten per cent penalty for the failure of the appellants to make the compensation payments under the terms of an agreement entered into by the parties and approved by the Commission. The respondent and the appellants entered into an agreement pursuant to Section 72-351 of the 1952 Code, which said agreement was approved by the Commission. This agreement and award provided for the payment of compensation from August 24, 1956, 'until terminated in accordance with the provisions of the Workmen's Compensation Law of the State of South Carolina.' This agreement for the payment of compensation, when approved by the Commission, was as binding on the parties as an order, decision or award of the Commission unappealed from, or an award of the Commission affirmed upon appeal. *Allen v. Benson Outdoor Advertising Co. et al.*, S.C., 112 S.E.2d 722. The agreement approved by the Commission could be enforced as is provided in Section 72-357 of the 1952 Code. It was held in the case of *Brown & Sharpe Mfg. Co. v. Giacoppa*, 69 R.I. 378, 33 A.2d 419, that where an agreement as to Workmen's Compensation has been entered into and approved by the Director of Labor, that such has the force and effect of a Court decree until modified or terminated in accordance with the provisions of the Workmen's Compensation Act.

In *Spivey ex rel. Spivey v. Car. Crawler*, 624 S.E.2d 435 at 437, 367 S.C. 154 (S.C. 2006), this Court sited *Singleton* in relation to a similar matter.

> Our supreme court has held the full commission has the power to approve a clincher and make it final and binding and not subject to review by the courts under any conditions. *Atkins v. Charleston Shipbuilding & Drydock*, 206 S.C. 63, 68, 33 S.E.2d 46, 48 (1945); see also *Singleton v. Young Lumber Company,* 236 S.C. 454, 114 S.E.2d 837 (1960) (holding settlement agreements, when approved by the full commission, are binding on the parties as an unappealed order, decision, or award of the full commission, or an award of the full commission affirmed on appeal).

The Court in *Spivey* went on to provide that a Clincher is a judgment for enforcement purposes, but that such a judgment does not allow for judicial review, stating:

> Section 42-17-70 of the South Carolina Code (2004) does use the term "judgment" to refer to approved settlement agreements (clinchers). The statute, however, refers to the settlement agreement as a "judgment" solely for *enforcement* purposes. The statute does not provide a settlement agreement constitutes a judgment for purposes of review. *See Wall v. C.Y. Thomason Co.*, 232 S.C. 153, 156, 101 S.E.2d 286, 288 (1957) (holding "the language [Section 72-357 (now § 42-17-70)] is mandatory; and the rendition of judgment in such case is *ministerial rather than judicial* for the award is subject to review only by the appeal process to which we have referred")(emphasis added).

Id.

In the recent case of *Ex parte Horne v. Pierside Boatworks,* 5929, Appellate Case 2018-001294 (Ct. App. Aug. 03, 2022), the issue of substantial compliance with the filing requirements of S.C. Code Ann. §42-9-390 was addressed. The Court held:

> Although the statutory amendments to section 42-9-390 were made 23 years after Mackey was decided, we presume the legislature was aware of Mackey when removing the requirement of approval by **[one member of]** the Commission and intended to promote the use of settlement agreements. See S.C. Code Ann. § 42-9-390 ("Nothing contained in this chapter may be construed so as to prevent settlements made by and between an employee and employer . . . .").

(Emphasized language inserted from previous version of 42-9-390) Ex parte Horne (S.C. App. 2022).

Likewise, it may be presumed that the legislature was aware of the holding in *Spivey* and the provisions of §42-17-70 when it amended §42-9-390 in 2007. §42-17-70 has not been amended and still provides for the enforcement of an agreement approved by the commission as a judgment. A clincher agreement may still be approved by the commission when the parties are both represented by counsel. Approval is accomplished by compliance with 67-803(2) without a Commissioner's signature.

Since 2007, potentially thousands of Clinchers have been entered where both parties are represented by counsel. In those thousands of cases, clinchers were filed and ministerially

approved without a Commissioner's signature. Appellants argue none of those approved clinchers are subject to enforcement by the Commission under §42-3-175. This simply ignores Regulations 67-801 and 67-803 and SC Code Ann, §42-17-70. Once approved in accordance with Regulations 67-803, these clinchers are orders or judgments subject to enforcement per §42-17-70.

IV. SC CODE ANN 42-3-175 APPLIES TO AN APPROVED CLINCHER WITHOUT A COMMISSIONER'S SIGNATURE.

Appellants argue the Commission does not have authority to impose sanctions under S.C. Code Ann. §42-3-175, in this case, or any case involving a clincher that has not been signed by at least one Commissioner.

Defendants' argument hinges on their proposition that a clincher cannot be approved without a Commissioner's signature. As noted in the preceding section of Respondent's Brief, this is not correct.

When a claimant is represented and the parties properly execute and file a clincher with the Commission, in accordance with SC Code Reg 67-803, it is administratively approved by operation of law. A Commissioner's signature is not required for approval under these circumstances. Approval is a ministerial rather than judicial function. The Commission certifies a copy of the approved clincher as binding, per SC Code Reg. 67-801. Per S. C. Code Ann. §42-17-70 an approved Clincher is a judgment for enforcement purposes. *See Spivey* at p. 437. Appellants argument that the Clincher is unapproved and therefore not an "order" or "award" as contemplated by 42-3-175 is erroneous.

Appellants reliance on *Shore v. Aiken County Govt,* 2014 SC Wrk. Comp. LEXIS 124 (2014) is misplaced. There the single cmmissioner attempted to impose sanctions under 42-3-175 for the defendants bad acts despite the lack of any clincher, settlement agreement, or order

having been entered. Here, the Appellants bad acts were subject to the imposition of penalties under 42-3-175, because an approved clincher had been filed over a year earlier.

V. THE HEARING COMMISSIONER MADE SPECIFIC FINDINGS OF FACT THAT APPELLANTS ACTED WITHOUT GOOD CAUSE.

Appellants next argue that the Hearing Order failed to make specific Findings of Fact that Appellants acted without "good cause." (R. p. 123, lines 10-24) This is incorrect and indicates a misreading of the Hearing Order by Appellants.

Finding of Fact 19 provides:

> I find Defendants do not have "good cause" for failing to pay the $3,625.00 to Dr. Mullen's office after the Clincher was approved. To argue that they did not have to pay medical expenses because the Claimant had already paid them is inconsistent with the language of the Clincher and evidence submitted at the hearing.

(R. p. 24).

Finding of Fact 22 provides:

> I find Defendants do not have "good cause" for failing to pay the $200.00 to Dr. Mullen's office for nearly 13 months after the Clincher was approved. Defendants were admittedly aware of an outstanding balance and had been contacted several times by Claimant's attorney regarding payment before the Motion to Compel was filed.

(R. p. 25).

Appellants' argument that the Hearing Commissioner failed to make a finding that Appellants' acted without "good cause" is proven false by simply reading the Order.

Appellants also misread the Hearing Order regarding attorney's fees. Appellants argue the Commissioner did not make a finding regarding Respondent's attorney's hourly rate.

Finding of Fact 26 provides:

> I find Defendants shall pay four (4) hours of attorney's fees at the rate of $350.00 per hour to Claimant's attorney for preparing and filing the Motion to Compel and attending the Motion hearing, and Defendants shall pay costs of $50 for the Motion filing fee. The

> hourly rate for Claimant's attorney is based on his thirty (30) years of legal experience and is consistent with the going rate for claimant's attorneys with like-experience in the field of South Carolina Workers' Compensation.

(R. p. 26). Appellants argument that the Hearing Commissioner failed to specify the Respondent's attorney's hourly rate or conduct any analysis regarding attorney's fees is incorrect.

VI. THE HEARING COMMISSIONER MADE SPECIFIC FINDINGS OF FACT THAT AN ORDER EXISTED AND THAT APPELLANTS ACTED IN WILLFUL DISOBEDIENCE OF THAT ORDER.

Again, Appellants either failed to accurately read the Hearing Order or ignored the portions that contradict their position. Appellants argue there is no specific finding that an Order existed.

Finding of Fact 15 provides:

> As such, I find that this approved Clincher is an "Order" or "Award" as those terms are contemplated by S.C. Code Ann §42-3-175, whether signed or unsigned by a Commissioner.

(R. p. 23).

Appellants next argue the Hearing Order makes no findings regarding willful disobedience. Findings 20 and 24 specifically address Appellants willful disobedience. (R. p. 25). These arguments by Appellants are baseless.

VII. THE ORDER DID NOT VIOLATE APPELLANTS' CONSTITUTIONAL RIGHTS.

Had Appellants complied with the terms of the Clincher Agreement, no fines would have been imposed. Appellants admit that they took over 13 months to pay $200.00 of authorized medical expenses. They refused to pay the remaining $3,625.00. The imposition of a daily fine was statutorily authorized. Unquestionably, Appellants were aware their actions subjected them to the imposition of the statutory fine. Moreover, a showing that Appellants acted without good

cause and in willful disobedience was required to impose these fines. Appellants were served with the Claimant's Motion, given timely notice of the hearing, and appeared and vigorously defended their position. Appellants Due Process argument is baseless.

The imposition of a $30.00 per day fine on the corporate conglomerate Appellants herein does not amount to "cruel and unusual punishment." It is not analogous to punitive damages, but if it were, Appellants math is flawed. The amount in controversy, to use Appellants' argument, is $3,825.00, not $200.00. The ratio of the total fines to the outstanding bills would be about 3 to 1. Now consider Appellant-BellSouth's ability to pay a $3,825.00 medical bill versus the totally disabled Respondent. The totally disabled Respondent was forced to pay the majority of these expenses out of his weekly disability checks in order to continue his authorized care with Dr. Mullen. Appellants sought to avoid liability by misconstruing the clincher's language to their benefit. The Hearing Commissioner saw through Appellants subterfuge and imposed statutory fines for their recalcitrant behavior. It would not have been an abuse of discretion, had the Full Commission affirmed the $500.00 per day fine imposed by the Single Commissioner. Instead, they reduced the fine to $30.00 per day. There was no violation of Defendants' 8th Amendment rights.

Respondent does not benefit financially from the imposition of these fines. In accordance with 42-3-175, all the money goes to the General Fund. Respondent did not seek a particular amount of fines against Appellants at either hearing. (R. p. 182). However, these fines were appropriately imposed and should serve as a deterrent to Appellants and future defendants who consider trying to avoid liability by distorting terms and ignoring their obligations under an approved clincher.

CONCLUSION

Based on the foregoing, the Order should be affirmed in its entirety.

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