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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 0100434

Emitt R. Gunnells, Claimant, ... Appellant,

vs.

Galey & Lord Industries, Employer, and Arrowpoint Capital Corporation, Carrier, ... Respondents.

FINAL BRIEF OF APPELLANT

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> **1. Pursuant to the Commission's Order of September 23, 2003, is it the law of the case that "...the Carrier shall continue permanent disability payments to the Appellant in the amount of Five Hundred Ten and 65/100 ($510.65) Dollars for the remaining years of his life or the balance of five hundred (500) weeks, whichever is greater."**
>
> **2. Even if it were not the law of the case that Appellant must receive benefits "...for the remaining years of his life...", is the Commission's Order, finding the Appellant's lifetime indemnity award ends on or about December 31, 2032, in error as a matter of law.**

B. **DID THE COMMISSION ERR IN FINDING THAT THE RESPONDENTS MAY CEASE PAYMENT OF BENEFITS OF APPELLANT'S LIFETIME AWARD ON OR ABOUT DECEMBER 1, 2023 IN ORDER TO RECOUP AN OVERPAYMENT?**

STATEMENT OF THE CASE

This is a Workers' Compensation case.

This matter arises from lifetime benefits award the Appellant received as a result of a physical brain injury by Order of January 7, 2003. In that award, the Commission ordered:

> FURTHER ORDERED that commencing April 25, 2002, the Employer/Carrier is required to pay a permanent **award of lifetime weekly benefits** pursuant to S.C. Code Ann. §42-9-10 at the compensation rate of Five Hundred Ten and 65/100 ($510.65) Dollars per week for the period commencing April 25, 2002, and **continuing for Claimant's lifetime**...

(Order, January 7, 2003, R. p. 28)(emphasis added).

That Order was unappealed.

Thereafter, the Appellant's counsel petitioned for a commuted lump sum payment of attorney's fees, which was awarded by an Order of the Commission, dated September 23, 2003. There the Commission Ordered:

> Pursuant to §42-15-90; R. 67-1207(B)(2), and Glover by Cauthen v. Suitt Const. Co., 458 S.E.2d 535, 318 S.C. 465 (S.C. 1995), **the amount of each temporary total payment the Claimant receives shall not be interrupted and the attorney's fee shall be deducted from the end of the award.**
>
> ***
>
> IT IS FURTHER ORDERED that the Carrier shall continue permanent disability payments to the Claimant in the amount of Five Hundred Ten and 65/100 ($510.65) Dollars **for the remaining years of his life** or the balance of five hundred (500) weeks, whichever is greater.

(Order, September 23, 2003, R. p. 41)(emphasis added).

That Order was also unappealed.

The Appellant continued to receive weekly Workers' Compensation benefits since.

Over seventeen years later, in 2021, the Respondents petitioned the Commission to reduce the Appellant's weekly benefits, or, in the alternative, to suspend the Appellant's benefits, in order to recoup an overpayment. The Appellant opposed the Respondent's petition.

By Order of August 16, 2021, the Single Commissioner found:

> The lifetime indemnity award ends on or about December 31, 2032, according to the mortality or life expectancy tables.
>
> (Order, August 16, 2021, R. p. 51).

Commission went on to Order that:

> Thus, on or about December 31, 2023, Petitioners can cease payment of benefits until the debt for the credit is fully satisfied. Thereafter, if Claimant is still living, Petitioners are to resume payment of permanent disability benefits until his death.
>
> (Order, August 16, 2021, R. pp. 51-52).

The Appellant appealed to the Commission Appellate Panel, which affirmed.

This appeal followed.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act sets forth the standard for judicial review of decisions of the Workers' Compensation Commission, Lark v. Bi-Lo, Inc., 276 S.C. 130 (1981); Hargrove v. Titan Textile Co., 360 S.C. 276 (Ct. App. 2004). Pursuant to this scope of review, the Court may not substitute its judgement for that of the Appellate Panel as to weight of the evidence on questions of fact. Gadson v. Mikasa Corp., 364 S.C. 214, 221 (2006); Grant v. Grant Textiles, 361 S.C. 188 (Ct. App. 2004). Factual findings of the Commission will be set aside only if unsupported by substantial evidence. Sharpe v. Case Produce, Inc., 336 S.C. 154 (1999).

An appellate court may reverse the Commission, however, when its decision is affected by an error of law. Liberty Mut. Ins. Co. v. S.C. Second Injury Fund., 363 S.C. 612, 619 (Ct. App. 2005). Statutory interpretation is a question of law. See, Stewart v. Richland Memorial Hosp., 350 S.C. 589, 593 (Ct. App. 2000).

ARGUMENT

A. THE COMMISSION ERRED IN FINDING THAT THE APPELLANT'S "LIFETIME INDEMNITY AWARD ENDS ON OR ABOUT DECEMBER 31, 2032; ACCORDING TO THE MORTALITY OR LIFE EXPECTANCY TABLES".

1. Pursuant to the Commission's Order of September 23, 2003, it is the law of the case that "...the Carrier shall continue permanent disability payments to the Appellant in the amount of Five Hundred Ten and 65/100 ($510.65) Dollars for the remaining years of his life or the balance of five hundred (500) weeks, whichever is greater."

By Order of January 7, 2003, Single Commissioner found the Appellant was entitled to weekly benefits at the rate of Five Hundred Ten and 65/00 ($510.65) Dollars, "...**continuing for Claimant's lifetime.**" (Order, January 7, 2003, R. p. 28)(emphasis added).

By Order of September 23, 2003, the Commission found that the Appellant was entitled to that weekly benefit, "...**for the remaining years of his life** or the balance of five hundred (500) weeks, whichever is greater." (Order, September 23, 2003, R. p. 41)(emphasis added).

Neither of those Orders was appealed; they are both the law of the case. It is well established in our law that an unappealed ruling is the law of the case and requires affirmance. See Floyd v. C.B.

Askins & Co. 382 S.C. 84, 89 (Ct. App. 2009) (citing First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 566 (Ct. App. 1998)(holding "The unchallenged ruling, right or wrong, is the law of the case and requires affirmance.")).

Simply put on January 7, 2003 the Commission Ordered that the Claimant receive weekly benefits for his "**lifetime**," (Order, January 07, 2003)(emphasis added). Again, on September 23, 2003, the Commission ordered that the Appellant shall receive Five Hundred Ten and 65/100 ($510.65) Dollars, "**...for the remaining years of his life...**" (Order, September 23, 2003)(emphasis added). Those Orders, are eighteen years old, are both unappealed, are the law of the case, and should be affirmed.

Over Seventeen years later, the Commission's Order of August 16, 2021, (Order, August 16, 2021) affirmed by the Commission Appellate Panel (Order, 5/9/2022, R. p. 68, ¶ 7), erroneously amended the Orders of January 7, 2003 and September 23, 2003, and in the place of, "lifetime", and "...for the remaining years of his life...", the Commission's Order of August 16, 2021, erroneously substituted, "...December 31, 2032..."

We do not know whether the Appellant will die on December 31, 2032.

What we do know, which is the law of the case, is that the Respondents shall continue to pay $510.65 "for the remaining years of [the Appellant's] life." (Order, September 23, 2003)(emphasis added).

The Commission's Order of August 16, 2021, affirmed by Order of May 9, 2022, is, therefore, in error, violates the law of the case, and should be reversed.

2. Even if it were not the law of the case that Appellant must receive benefits "...for the remaining years of his life...", the Commission's Order, finding the Appellant's lifetime indemnity award ends on or about December 31, 2032, is in error as a matter of law.

On January 7, 2003, the Commission awarded the Appellant lifetime benefits Pursuant to S.C. Code §42-9-10(C). In particular, §42-9-10(C) provides:

> 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**.
>
> (§42-9-10(C)((emphasis added)).

S.C. Code §42-9-10(C) and the January 7, 2003, Order use the term "life."

The Single Commissioner, in the Order of August 16, 2021, and the Commission Appellate Panel in its May 9, 2022 Order, substituted for that term "life", a date certain: December 31, 2032; the end date of the Claimant's statutory life expectancy.

The Claimant's entitlement to benefits for his "life" is established by statute, and is law of the case and cannot be changed.

The Commission substituted the term "life" with a date certain for the Claimant's death; concluding, implicitly, that the Legislature's reference to "life" in §42-9-10(C) refers to the Appellant's statutory life expectancy set by the life expectancy table in S.C. Code §19-1-150. (See Order, August 16, 2021, R. p.51 (finding "the lifetime indemnity award ends on or about December 31, 2032, according to the mortality or life expectancy tables")).

In order to reach that conclusion, the Commission ignored its own prior Order of September 23, 2003, which explicitly found the Appellant entitled to benefits, "...for the remaining years of his life..." That error, Appellant has addressed above.

However, even if the Order of September 23, 2003 did not exist, the Commission's substitution of the statutory life expectancy date in place of "life" would be error as a matter of law.

This Court has previously addressed this issue in another context. In the case of Floyd v. C.B. Askins & Co., 382 S.C. 84 (Ct. App. 2009), the Court of Appeals addressed the question of whether the term "life" in §42-9-10(C) referred to the date of statutory life expectancy.

There, a Claimant received a lifetime award pursuant to SC §42-9-10(C) for physical brain damage. He died from an unrelated cause before reaching his statutory life expectancy date. Beneficiaries sought an award of the balance of his benefits to be paid through his statutory life expectancy date. The Court of Appeals declined; finding that the award under S.C. Code §42-9-10(C) was for the Appellant's lifetime, not his statutory life expectancy; and, therefore, his benefits abated upon his death.

Thus, pursuant to Floyd v. C.B. Askins & Co. a Claimant who dies before his statutory life expectancy is not entitled to receive benefits through the date of their statutory life expectancy; instead, the benefits in a lifetime award abate upon the Claimant's death.

Here, in conflict with Floyd, the Commission substituted for Appellant's natural "life", the date of his statutory "life expectancy", finding:

> The lifetime indemnity award ends on or about December 31, 2032, according to the mortality or life expectancy tables.
>
> (Order, August 16, 2021, R. p. 51)

Such finding is an error and should be reversed.

B. THE COMMISSION ERRED IN FINDING THAT THE RESPONDENTS MAY CEASE PAYMENT OF BENEFITS OF APPELLANT'S LIFETIME AWARD ON OR ABOUT DECEMBER 1, 2023 IN ORDER TO RECOUP AN OVERPAYMENT.

The single Commissioner Ordered that Respondents may cease payment of temporary total disability benefits on December 1, 2023, eight years and eleven months prior to Appellant's statutory life expectancy, in order to recoup an overpayment. (Order, August 16, 2021, R. p. 51-52). The Commission Appellate Panel affirmed. (Order, May 9, 2022, R. p. 68, ¶ 7).

As argued above, this Order runs contrary to the law of the case; which, pursuant to the Commission's Order of September 23, 2003, requires that the Appellant shall receive benefits at the rate of $510.65, "...**for the remaining years of his life**...", (Order, September 23, 2003, R. p. 41)(emphasis added), not for his "statutory life expectancy."

Again, such ruling is the law of the case; right or wrong, it should be affirmed. See, First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 556 (Ct. App. 1998) ("The unchallenged ruling, right or wrong, is the law of the case and requires affirmance").

Further, S.C. Code §42-9-210 sets out the method by which deduction from compensation of payments made by the Carrier when not due and payable, may be made. The statute is explicit that "...such deductions shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payment." S.C. Code §42-9-210.

Section 42-9-210 prohibits the reduction of weekly payments to recover overpayments. Section 42-9-210 allows a Carrier to recover overpayments only by "shortening the period during which compensation must be paid"; that is, by ceasing payments the appropriate number of weeks

before the end of the period during which compensation must be paid on an award.

Compensation, in this case, must be paid for the Appellant's lifetime. Therefore, §42-9-210 would only allow the Carrier to recover an overpayment by ceasing payments the appropriate number of weeks before the Appellant's death.

Of course, no one knows when the Appellant will die.

Thus, by operation of S.C. Code §42-9-10(C) and §42-9-210, the date upon which the Carrier may cease payments to recoup an overpayment in a brain damage case involving a lifetime benefit award cannot be determined.

No doubt, the Carrier disagrees with the effect of the law as written. However, dissatisfaction with the effect of the law as written is not a justification for the Court to impose another meaning.

The legislature could have used the term "statutory life expectancy" in place of the term "life", in S.C. Code §42-9-10(C). They chose not to.

The Legislature could have provided that in catastrophic cases involving brain damage or paralysis a Claimant shall receive benefits for the fixed period set at out the tables in S.C. Code §19-1-150. They did not.

The Legislature chose, instead, in serious and catastrophic cases involving brain damage, paraplegia or quadriplegia, to provide benefits for "life." The term is plain and unambiguous.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature." Garvin v. State, 365 S.C. 16, 21 (2005);

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." Knotts v. S.C. Dep't of Natural Res., 348 S.C. 1(2002) (quoting Norman J. Singer, Sutherland Statutory Construction, §46.03 at 94 (5th Ed. 1992)); Bayle v. South Carolina

Dep't of Transp., 344 S.C. 115, 122 (Ct. App. 2011). "The legislature's intent should be ascertained primarily from the plain language of the statute." State v. Landis, 362 S.C. 97, 102 (Ct. App. 2004); State v. Morgan, 352 S.C. 359, 366 (Ct. App. 2002); Stephen v. Avins Constr. Co., 324 S.C. 334 (Ct. App. 1996).

"The first question of statutory interpretation is whether the statute's meaning is clear on its face." Wade v. Berkeley County, 348 S.C. 224, 229 (2002) (citing Kennedy v. South Carolina Ret. Sys., 345 S.C. 339 (2001)). " Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning." Vaughn v. Bernhardt, 345 S.C. 196, 198 (2001) (citing Hodges v. Rainey, 341 S.C. 79 (2000)).

"Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 231 (Ct. App. 2005) (citing Hodges, 341 S.C. 79; Bayle, 344 S.C. 115, at 122, 542). "when the terms of a statute are clear, the court must apply those terms according to their literal meaning." Georgia-Carolina Bail Bonds, 354 S.C. at 24 (citing Cooper v. Moore, 351 S.C. 207, 212 (2002).

Further, our Supreme Court has reminded Courts that:

> We are further bound by precedent to strictly construe statutes in derogation of the common law. Gilfillin v. Gilfillin, 344 S.C. 407, 544 S.E.2d 829 (2001). Workers' compensation statutes provide an exclusive compensatory system in derogation of common law rights. See Caughman v. Columbia YMCA, 212 S.C. 337, 47 S.E.2d 788 (1948). As such, when reading a workers' compensation statute we strictly construe its terms, leaving it to the legislature to amend and define its ambiguities.
> Wigfall v. Tideland Utils., 354 S.C. 100, 110 (2003).

The Carrier urges this Court that they have overpaid the Appellant and should, in fairness, be allowed to recover that overpayment.

Our Courts have been clear and consistent in their pronouncement that it is not the province of Courts to perform legislative functions; and that the Court's own sense of fairness or equity cannot prevail over legislative enactment.

In Wigfall v. Tideland Utils., 354 S.C. 100 (2003) the Supreme Court found that, though a Claimant was totally disabled, the language of the Workers' Compensation Act, §42-9-30, limited him to a lesser recovery for loss of use to a scheduled body part rather than a larger recovery for loss of earning capacity; where his injury was limited to one body part.

In addressing the Claimant's equity arguments, the Court explained:

> However, such sources of inequities are the province of the Legislature to correct by balancing the interests, risks and rewards of such a large, comprehensive program. This Court may only take such equitable arguments into account where legislative intent and statutory language are not clear.
>
> Our decision does not dispute that the result Wigfall desires may be, in the abstract, the most just result of those in his condition.
>
> * * *
>
> Our decision does maintain the rule that equity cannot prevail over a positive legislative enactment. Town of Zebulon v. Dawson, 216 N.C. 520, 5 S.E.2d 535 (1939). As the South Carolina Court of Appeals explained:
>
> There is a sound reason for this principle. An important function of legislation is to consider and to balance the **[*117]** competing interests and equities arising from the conduct of human affairs. Worker's compensation laws are a classic example of this legislative balancing of the equities. When the legislature has struck a balance by enacting a statutory rule, the courts have no prerogative to annul the legislative choice by applying "chancellor's foot" notions of equity in its place. Stated differently, "it is not the province of this court to perform legislative functions."
>
> Wigfall, at 116-117.

CONCLUSION

The Legislature enacted two statutes, §42-9-10(C) and §42-9-210; the plain language of which result in carriers being unable to recoup overpayments of compensation from Claimants with catastrophic injuries such as brain damage, paraplegia or quadriplegia.

In sum, §42-9-210 only allows overpayments to be recouped by shortening the period of an award. A lifetime award under §42-9-10(C) has no fixed period to shorten, since the date of one's death is uncertain.

The Carrier, and the Commission, may find that result unfair. However, the Legislature has balanced the equities of the system, "it is not the province of this court to perform legislative functions." Wigfall, at 116-117.

In any event, if the Carrier sought to challenge the Commission's finding that the Appellant must receive benefits, "...for the remaining years of his life..." they were required to do so over seventeen years ago, on an appeal from the Commission's Order of September 23, 2003. They did not. That Order is the law of the case. Right or wrong, it should be affirmed.

For foregoing reasons, the Commission's Order should be reversed.

Respectfully submitted.

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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