

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1307922

PAMELA CARTEE )  
 )  
 Claimant, )  
 )  
 v. )  
 S.C. JUDICIAL DEPARTMENT )  
 )  
 Employer, and )  
 )  
 STATE ACCIDENT FUND )  
 )  
 Carrier, )  
 )  
 Defendants. )

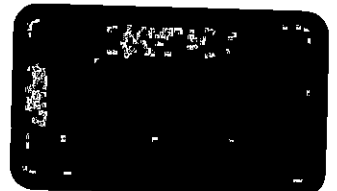
MOTION ORDER

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SC Court of Appeals

This matter came before the Commission on September 19, 2022 on Counsel/ Appellant's Motion for Rehearing. For the reasons stated herein, the Motion is denied.

FINDINGS OF FACT

1. This matter arose out of a claim for an alleged repetitive trauma injury to the bilateral hands, injury to the cervical spine, and psychological overlay caused by Ms. Cartee's employment as a court reporter for the South Carolina Judicial Department.
2. On April 13, 2017, the Single Commissioner found that Ms. Cartee reached maximum medical improvement on October 12, 2016 and awarded permanent and total disability benefits payable in a lump sum and lifetime, causally related medical treatment.
3. Both parties appealed the decision to the Appellate Panel, which ultimately affirmed the Single Commissioner's benefits award on October 17, 2017.
4. During the pendency of the appeal, Defendants continued to make weekly compensation payments to Claimant pursuant to the Act until approximately December 11, 2017 when they submitted a Form 19 indicating that payment, representing the commuted value of the remaining 500 weeks of Claimant's April 13, 2017 award, had been made in the lump sum amount of \$179,077.14.



5. Thereafter, Claimant's Counsel filed the attorney fee petition that is the subject of this litigation. The petition listed the total amount of compensation paid to Claimant including sums paid as weekly payments during the pendency of the parties cross-appeal on the merits (\$339,711.44) and sought approval of an attorney's fee in the amount of \$73,094.45.
6. The Single Commissioner approved a fee of \$59,632.69, the maximum 33.3% of the remaining lump sum (\$179,077.14) paid to Claimant upon the expiration of the appellate panel appeal period. The remainder of Counsel's requested fee was denied.
7. The question before the Appellate Panel was whether the Act and Regulations allow the Commission to award an attorney's fee on sums previously paid to a claimant on a weekly basis prior to the date an award becomes final. A majority of the Panel affirmed the Single Commissioner in full, noting that the Full Commission Order became final (or "secure") after the 30-day appeal period expired. Counsel would only be entitled to a fee once the Order became final and Claimant's compensation was secured.
8. However, two members dissented in part, concluding that Counsel would be entitled to a fee on October 17, 2017, the date the Appellate Panel issued its Decision and Order.
9. Counsel timely filed the instant petition for rehearing alleging that they are entitled to a fee on all compensation paid, including sums paid to Ms. Cartee weekly during the pendency of the Appellate Panel Appeal because Counsel "secured" payment of compensation on April 13, 2017, the date of the Single Commissioner's Decision and Order on the merits.

#### CONCLUSIONS OF LAW

1. Regulation 67-215B authorizes the Commission to "entertain motions to *reconsider* an order, opinion, or award, if the purpose of the motion is not an attempt to reargue the merits of the dispute." S.C. Code Regs. 67-215B (2022). Claimant's pleading is entitled "Motion for *Rehearing*." The South Carolina Administrative Procedures Act contemplates the filing of "petitions for rehearing" and has been interpreted by the Courts as providing the right to file a motion for rehearing with the Appellate Panel. S.C. Code Ann. § 1-23-380(1)(2008, as amended); Rhame v. Charleston County School District, 412 S.C. 273 (2015). Commission regulations authorize it to entertain "motions to reconsider." See S.C. Code Regs. 67-215B (2018, as amended). While there is no explanation for the use of the two different terms, the legal standards for review are similar. See S.C. Code Regs. 67-215B (2018, as amended) ("A

Single Commissioner or the Full Commission may entertain motions to reconsider. . . if the purpose of the motion is not an attempt to reargue the merits. . .”) and Rule 221, SCAR (“A petition for rehearing shall. . . state with particularity the points supposed to have been overlooked or misapprehended by the Court.”); Kennedy v. South Carolina Retirement System, 349 S.C. 531, 532 (2001)(“. . .nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.”). Therefore, the Commission considers Counsel’s Motion for Rehearing as authorized by S.C. Code Regs. 67-215B (2022).

2. The Commission fully and contemplatively considered Counsel’s Motion for Rehearing and it is, hereby, denied. The Appellate Panel did not overlook or misapprehend any points in making its decision. Therefore, the Commission is bound by its current laws and regulation as written. “Attorney fees. . .for services under this title are subject to the approval of the Commission.” S.C. Code Ann. § 42-15-90 (2012, as amended). S.C. Code Regs. 67-1205(C) permits a maximum attorney fee of 33.3% of the “total amount of compensation.” S.C. Code Regs. 67-1205 (C)(2022). “Compensation” is defined as “the money allowance payable to an employee.” S.C. Code Ann. § 42-1-100 (1962). “If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the “settlement or award.” S.C. Code Regs. 67-1205(C)(2)(2022). There is no dispute that through her Counsel’s able efforts, Claimant was awarded a total of \$339,711.44 as monetary compensation during the pendency of her claim. Counsel urges the Commission to adopt an interpretation of Regulation 67-1205(C) that allows the Commission to calculate an attorney’s fee based upon the total amount of benefits paid after a finding of maximum medical improvement rather than calculating the fee based upon the settlement or award ultimately secured as specifically stated in the statute. We decline to adopt this interpretation.
3. Our regulations require that an attorney “secure” compensation for a client prior to taking a fee on the settlement or award. The Merriam-Webster Dictionary defines “secure” as “to put beyond hazard of losing or of not receiving; guarantee.[sic]”<sup>1</sup> The Workers’ Compensation Act provides the appellate procedure for parties seeking review of Commission awards. *See* S.C. Code Ann. § 42-17-50 (1981, as amended) (providing for an application for review to the

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<sup>1</sup> Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/secure> (last accessed October 7, 2022).

Appellate Panel within 14 days after notice of the award) and S.C. Code Ann. § 42-17-60 (2007, as amended) (The Appellate Panel's award is conclusive and binding as to all questions of fact but is not conclusive and binding as to questions of law until the expiration of the 30-day judicial appeal period). In this case, neither party ultimately sought judicial review of the Appellate Panel's Order for questions of law or questions of fact. Holding that the Commission's award was final on both questions prior to the expiration of the appeal period obscures the legislature's intent to provide for a full 30 days to file an appeal. Case v. Hermitage Mills is unhelpful to this analysis. Case interpreted a prior version of Section 42-17-60 that included a 30-day supersedes. Defendants' paid benefits while the claim was on appeal. There was no supersedes issue. *See generally Case v. Hermitage Cotton Mills*, 236 S.C. 515 (1960).

4. Permitting an attorney to collect a fee on benefits previously received by a claimant is inconsistent with the purpose of the Workers' Compensation Act, and contrary to the legislature's intent. *See Cokeley v. Robert Lee, Inc.*, 197 S.C. 157 (1941) ("Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents to relieve them of the uncertainties of a trial in a suit for damages. . . such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results."); S.C. Code Regs. 67-1205C(5) (requiring an attorney to calculate the fee on the lump sum payable to the client *after* the award or settlement is commuted to present value);
5. Furthermore, awarding Counsels' requested fee is contrary to the requirements set forth in S.C. Code Regs. 67-1205 B because it conflicts with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee. Regulation 67-1205B deems a contingent fee reasonable if the fee is calculated according to subsection C, the attorney fully explains the fee agreement and informs the client of the net recovery, the client signs the Form 61 fee petition, and the fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee. S.C. Code Regs. 67-1205B (2022). SCRPC Rule 1.5(a) and Glasscock v. Glasscock require that the "fee customarily charged in the locality for similar legal services" and the "customary legal fees for similar services" be considered when

assessing the reasonableness of a requested attorney's fee. Approving an attorney fee to be paid from benefits previously received by a claimant would not be a fee customarily charged in the locality for similar services. It is contrary to established law, inconsistent with the purpose of the Act, and incompatible with legislative intent. Though Counsel referenced prior cases in which a fee has been awarded under certain circumstances, the record is bereft of any evidence indicating that a fee had been customarily awarded in similar circumstances. See Glasscock v. Glasscock, 304 S.C. 158, 161 (1991).

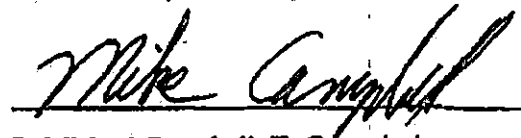
6. The Single Commissioner and the Appellate Panel faithfully applied the plain meaning of the Act and Regulations to the facts of this case and, in their discretion, awarded a reasonable and appropriate attorneys' fee.

**IT IS ORDERED** that Counsel's Petition for Rehearing is denied. This is the final Decision of the Commission on this claim. The parties retain all appellate rights pursuant to S.C. Code Ann. § 42-17-60.

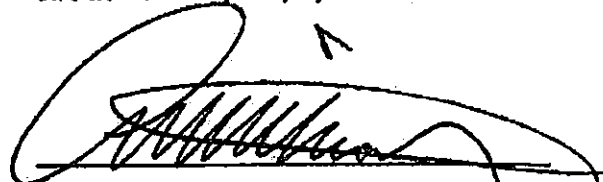
**IT IS SO ORDERED.**

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(date) Columbia, SC

  
\_\_\_\_\_  
T. Scott Beck, Chairman

  
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R. Michael Campbell, II, Commissioner

  
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Melody L. James, Commissioner

  
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Avery B. Wilkerson, Jr., Commissioner

  
\_\_\_\_\_  
Aisha Taylor, Commissioner

**Order Served via email:**

Preston F. McDaniel McDaniel Law Firm <a href="mailto:preston@pfmcdlaw.com">preston@pfmcdlaw.com</a>	John M. Milling Attorney at Law <a href="mailto:johnmilling@bellsouth.net">johnmilling@bellsouth.net</a>
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**Order Served via USPS:**

Preston F. McDaniel McDaniel Law Firm 1315 Elmwood Ave Columbia, SC 29201  Pamela Cartee 1825 Woodbine Drive Hartsville, SC 29550	John M. Milling Attorney at Law P.O. Box 519 Darlington, SC 29532
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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Eugenia Hollmon on January 4, 2023***