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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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.

APPENDIX TO RECORD ON APPEAL

April 28, 2025

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33 U.S. Code §908(i) which is the Federal Longshore and Harbor Workers' Compensation Act provision that mirrors S.C. Code Ann. §42-9-390 and S.C. Code Regs. 67-801 and 67-8035

WORKERS' COMPENSATION COMMISSION

67-801. Settlement of the Claim, General.

A. After the claimant reaches maximum medical improvement the parties may agree to settle the claim by signing a Form 16, Agreement for Permanent Disability/Disfigurement Compensation, or by signing an Agreement and Final Release (clincher).

B. If the claimant is represented by an attorney, an appearance before a Commissioner is not required for approval of a settlement unless either party requests an informal conference or the Commissioner schedules a hearing.

C. If the claimant is not represented by an attorney, the parties must appear before the Commissioner assigned to the claim at an informal conference for approval of the settlement. At the informal conference, the Commissioner will review the proposed settlement and may approve it if the Commissioner finds the settlement fairly made and in accordance with the provisions of the Act.

D. A Form 16 retains the claimant's right to request a hearing for additional benefits not later than one year from the date of the last compensation payment. By signing the Form 16, the employer's representative does not agree it will make any additional payments in the future. The claimant may request a hearing according to R.67-207 for additional benefits.

E. An Agreement and Final Release (clincher) relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses, unless the Agreement and Final Release specifically provides otherwise. When the claimant signs the Agreement and Final Release and it is approved, the claimant does not have the right to ask for additional payments in the future even if the claimant's medical condition worsens, unless otherwise specifically provided in the document.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

Effect of Amendment

The 1997 amendment revised A.

Notes of Decisions

In general 1

1. In general

Issue of whether workers' compensation commission had jurisdiction to review a "clincher" agreement releasing all of claimant's claims was not a justiciable controversy ripe for consideration by the Court of Appeals, given that commission had merely granted a hearing on whether to review agreement on basis of fraud, and hearing had not be held at time of employer's appeal. *Spivey ex rel. Spivey v. Carolina Crawler* (S.C.App. 2005) 624 S.E.2d 435, 367 S.C. 154, rehearing denied. *Workers' Compensation* ⇨ 1834

Circuit court lacked jurisdiction to review "clincher" agreement that was a final release of claimant's workers' compensation claims, even though claimant asserted that rule governing relief from judgment and Administrative Procedures Act (APA) permitted judicial review, where clincher specifically provided that the agreement was not subject to review or amendment by the courts of the state, clincher agreement was approved by full workers' compensation commission, settlement agreement was not a "judgment" for which relief could be granted under the rule, and *Workers' Compensation Act* did not require commission to make a reviewable record in approving the clincher. *Spivey ex rel. Spivey v. Carolina Crawler* (S.C.App. 2005) 624 S.E.2d 435, 367 S.C. 154, rehearing denied. *Workers' Compensation* ⇨ 1144

67-803. Settlement by Agreement and Final Release.

A. If the parties agree to the terms of a settlement by entering into an Agreement and Final Release, the document shall include the following:

- (1) the caption of the claim;
- (2) a statement of the facts at issue;
- (3) the date and nature of the alleged injury coinciding with the date and nature of each injury on the Form 12A, Form 50, or Form 52;
- (4) the amount of the settlement and terms of payment; and
- (5) the signature of the claimant, his or her attorney if any, and the attorney for the employer's representative.

B. An Agreement and Final Release is approved when signed by the Commissioner assigned to the claim, or by another Commissioner if the assigned Commissioner is unavailable. An approved Agreement and Final Release is binding. The employer's representative pays compensation according to its terms.

(1) If the claimant is not represented by an attorney, the Agreement and Final Release must be approved at an informal conference as follows:

(a) The employer's representative must request an informal conference by filing an updated Form 18 showing status of payment of temporary compensation, if any, and medical expenses with the Commission's Judicial Department. The claimant may request an informal conference by writing to the Judicial Department.

(b) The attorney for the employer's representative and the claimant attend the informal conference. If the parties reach an agreement at the informal conference that the Commissioner approves, the Agreement and Final Release is signed by the claimant, the attorney for the employer's representative, and the Commissioner.

(c) The attorney for the employer's representative must provide three copies of the Agreement and Final Release to the Commissioner at the informal conference. The Commission returns an official copy to the attorney for the employer's representative, and the attorney for the employer's representative shall provide the claimant a copy of the approved and official Agreement and Final Release.

(d) If the Commissioner does not approve the Agreement and Final Release, the Agreement and Final Release is neither approved nor binding. The Commission will set the claim for hearing according to R.67-804 I.

(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 may then be approved by the Commissioner assigned the claim without an appearance before a Commissioner as follows:

(a) The attorney for the employer's representative files the original and one copy of the proposed Agreement and Final Release with the Claims Department.

(b) The claim is assigned to the Commissioner who last issued an order in the case, or if an order has not been issued, to the Commissioner assigned to the claim, or to any other Commissioner if the assigned Commissioner is unavailable.

(c) The Commissioner reviews the Agreement and Final Release and he or she may sign and approve it.

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

(e) The employer's representative must provide the claimant a copy of the approved Agreement.

C. Commissioners will not approve an Agreement and Final Release that is not fairly made and in accordance with the Act. If the Agreement and Final Release is not approved, the Commissioner assigned the claim may schedule an informal conference or hearing according to R.67-804 I.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 24, Issue No. 4, eff April 28, 2000; State Register Volume 30, Issue No. 5, eff May 26, 2006.

Effect of Amendment

The 1996 amendment revised B, B(1)(c), B(2)(d), and C.

The 2000 amendment revised B and B(2)(b).

The 2006 amendment changed "case" to "claim" in A(1) and B, changed "Commissioner(s) assigned" to "Commissioner assigned" in B, rewrote B(1)(c) and (d), and made nonsubstantive changes.

ARTICLE 8

SETTLEMENTS, PROCEDURES

(Statutory Authority: 1976 Code § 42-3-30)

Reg.	Reg.
67-801. Settlement of the Claim, General.	67-803. Settlement by Agreement and Final Release.
67-802. Settlement, Form 16, Form 16A.	67-804. Informal Conference.
	67-805. Third Party Settlements.

67-801. Settlement of the Claim, General.

A. After the claimant reaches maximum medical improvement the parties may agree to settle the claim by signing a Form 16 or Form 16A, Agreement for Permanent Disability/Disfigurement Compensation, or by signing an Agreement and Final Release (clincher).

B. If each party is represented by an attorney, an appearance before a Commissioner is not required for approval of a settlement unless either party requests an informal conference, or the Commissioner schedules a hearing.

C. If the claimant is not represented by an attorney, the parties must appear before the Commissioner assigned to the claim at an informal conference for approval of the settlement. At the informal conference, the Commissioner will review the proposed settlement and may approve it if the Commissioner finds the settlement fairly made and in accordance with the provisions of the Act.

D. A Form 16 or Form 16A retains the claimant's right to request a hearing according to R.67-207 for additional benefits not later than one year from the date of the last compensation payment. By signing the Form 16 or Form 16A, the employer's representative does not agree it will make any additional payments in the future unless the form specifically provides otherwise.

E. An Agreement and Final Release (clincher) relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses, unless the Agreement and Final Release specifically provides otherwise. When the claimant signs the Agreement and Final Release and it is approved, the claimant does not have the right to ask for additional payments in the future even if the claimant's medical condition worsens, unless otherwise specifically provided in the document.

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

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

Notes of Decisions

Justiciability 1

1. Justiciability

Issue of whether workers' compensation commission had jurisdiction to review a "clincher" agreement releasing all of claimant's claims was not a justiciable controversy ripe for consideration by the Court of Appeals, given that commission had merely granted a hearing on whether to review agreement on basis of fraud, and hearing had not be held at time of employer's appeal. Spivey ex rel. Spivey v. Carolina Crawler (S.C.App. 2005) 624 S.E.2d 435, 367 S.C. 154, rehearing denied. Workers' Compensation ⇨ 1834

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- (2) A statement of the facts at issue;
- (3) The date and nature of the alleged injury coinciding with the date and nature of each injury on the Form 12A, Form 50, or Form 52;
- (4) The amount of the settlement and terms of payment; and
- (5) The signature of the claimant, his or her attorney, if any, and the attorney for the employer's representative.

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

(1) If the claimant is not represented by an attorney, the Agreement and Final Release must be approved at an informal conference.

(a) The employer's representative must request an informal conference by filing an updated Form 18 showing status of payment of temporary compensation, if any, and medical expenses with the Commission's Judicial Department. For claims arising after July 1, 2007 a Form 14B is also required. The claimant may request an informal conference by writing to the Judicial Department.

(b) The attorney for the employer's representative and the claimant attend the informal conference. If the parties reach an agreement at the informal conference that the Commissioner approves, the Agreement and Final Release is signed by the claimant, the attorney for the employer's representative, and the Commissioner.

(c) The attorney for the employer's representative must provide the original and two copies of the Agreement and Final Release to the Commissioner at the informal conference. The Commission returns an official copy to the attorney for the employer's representative, and the attorney for the employer's representative shall provide the claimant a copy of the official Agreement and Final Release.

(d) If the Commissioner does not approve the Agreement and Final Release, the Agreement and Final Release is neither approved nor binding. The Commission will set the claim for hearing according to R.67-804f.

(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.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 24, Issue No. 4, eff April 28, 2000; State Register Volume 30, Issue No. 5, eff May 26, 2006; State Register Volume 34, Issue No. 2, eff February 26, 2010.

33 U.S. Code § 908 - Compensation for disability

Compensation for disability shall be paid to the employee as follows:

...

(i)

- (1) Whenever the parties to any claim for compensation under this chapter, including survivors benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.
- (2) If the deputy commissioner disapproves an application for settlement under paragraph (1), the deputy commissioner shall issue a written statement within thirty days containing the reasons for disapproval. Any party to the settlement may request a hearing before an administrative law judge in the manner prescribed by this chapter. Following such hearing, the administrative law judge shall enter an order approving or rejecting the settlement.
- (3) A settlement approved under this section shall discharge the liability of the employer or carrier, or both. Settlements may be agreed upon at any stage of the proceeding including after entry of a final compensation order.
- (4) The special fund shall not be liable for reimbursement of any sums paid or payable to an employee or any beneficiary under such settlement, or otherwise voluntarily paid prior to such settlement by the employer or carrier, or both.

Subsec. (i)(1) to (3). Pub. L. 98-426, § 8(f), substituted pars. (1) to (3) respecting procedures for approval of a settlement by the deputy commissioner or administrative law judge for former pars. (A) and (B) respecting settlements approved by the deputy commissioner or Secretary.

Subsec. (i)(4). Pub. L. 98-426, § 8(g), added par. (4).