

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

THEODORE P. POLANSKY,)
)
Employee,)
Respondent/Cross-Appellant)
And As Movant,)

Docket No: 2015-CP-40-07468
&
2015-CP-40-07380 ✓

v.)

SC OFFICE OF THE ATTORNEY)
GENERAL,)

ORDER ORDERING PAYMENT OF
ACCRUED AWARD PURSUANT TO
S.C. CODE §42-17-60

Employer, and)

RECEIVED

STATE ACCIDENT FUND,)

SEP 08 2016

Carrier,)
Appellants/Cross-Respondents)
And As Motion-Respondents)

SC Court of Appeals

2016 JUL -7 PM 12:34
JEANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter came to be heard by me on February 8, 2016 based on a Motion filed by the Employee/Claimant for payment of the accrued Award of the South Carolina Workers' Compensation Commission pursuant to SC Code §42-17-60. The Commission made an Award to Mr. Polansky of lifetime weekly compensation benefits reinstated as of March 8, 2011 under the Award. The Movant was represented by Preston F. McDaniel of the Richland County Bar and the Respondents to the Motion, and Appellants in this Court were represented by Peter J. Leventis, IV, also the Richland County Bar.

The Award made in this matter arose out of and as a result of two accepted injuries by accident that occurred in 1999 and 2000 and thus the provisions of SC Code §42-17-60 as amended,

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through July 1, 2007, apply to these pre-2007 claims. Prior to July 1, 2007, SC Code §42-17-60 in reference to the issue before the Court provided that:

"In the case of an appeal from the Decision of the Commission on questions of law, the appeal does not operate as a supersedes and thereafter the employer is required to make payment of the Award involved in the appeal . . . until the questions at issue have been fully determined . . ."
(Emphasis added).

In this case, the Hearing Commissioner Awarded the Claimant lifetime benefits on July 1, 2015 and specifically provided in her Award that:

"THEREFORE IT IS ORDERED that the Claimant is found to be entitled to an Award for lifetime weekly compensation benefits in the amount of \$507.34/week due to having sustained serious, severe permanent physical brain damage as a result of the injuries stemming from his work-related accidents. Those payments are to resume (sic, with) the last payment of compensation to the Claimant, which was made on or about the week of March 8, 2011. All compensation that has accrued shall be paid in a lump sum through the date that weekly compensation benefits are resumed." (Emphasis added).

That Award was appealed to the SC Workers' Compensation Commission and Full Commission by Order dated and filed November 10, 2015, affirmed that Award. Subsequent to the Decision of the Full Commission, on December 9th, the Award was appealed to this Court by the Defendants.

Based on the arguments presented to the Court and the Record at the Motion hearing, the parties agree that after filing the Appeal, even after request, the Defendants did not make any payment either as to the accrued Award nor did they

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restart weekly payments and as a result, the Claimant filed the Motion for Payment pursuant to the Act. Subsequently the Defendants agreed to and have resumed weekly payments of compensation but only beginning thirty (30) days after the Decision of the Full Commission but have continued to refuse to make payment of the accrued Award.

After review of the arguments, the statutes and the case law it is the finding of the Court that the Defendants shall make payment of the weekly compensation Award that has accrued from the date compensation was reinstated on March 8,, 2011 through the date that the Defendants resumed payments of weekly payments pursuant to the Award. The Supreme Court has repeatedly held and reaffirmed that in this factual scenario where a Hearing Commissioner has made an Award and that Award is affirmed on appeal by the Full Commission, that the Defendants are required to make full payment under the Award of all accrued compensation through the time that weekly compensation payments are resumed; and are required to make continuing payments of weekly compensation until the appeal is resolved. This is especially true in a case that has been accepted; weekly benefits are then stopped; and then the Commission reinstates benefits back to the date they were stopped as in this case. The Court takes note of the facts that this was an accepted case and that the parties agree the claimant is totally and permanently disabled and only disagree as to his entitlement to lifetime compensation benefits.

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The Supreme Court in the case of Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960) went over its previous decisions concerning various fact scenarios and from what date in each of those fact situations, payment of an Award was due under §42-17-60. In the Case, Decision, supra, the Supreme Court reaffirmed its previous four (4) decisions concerning those various factual scenarios concerning payment of the Commission, "Award". As part of that confirmation, the Court reaffirmed its Decision in Godfrey v. Mills Mill No. 2, 234 S.C. 401, 108 S.E.2d 587 (1959). In Godfrey, the Supreme Court held that in the fact scenario where payment of weekly compensation benefits was ordered to be reinstated (as here) and where that Award was affirmed by the Full Commission on Appeal (as here), full payment of accrued Award back to the date of reinstatement was required under the "Award" of the Commission. This Court has read the paragraph from Case vs. Hermitage, supra, that is actually dicta to its decision, but which was cited by both parties in support of their positions and agrees with the Claimant's reading of the decision. In the first part of that paragraph, the Court makes it clear that the Court and statute require payment, "after the date" of the, "Commission's Award" of, "weekly benefits" and that it is such, "additional amounts" in, "Addition to weekly benefits" that are not required to be paid. When read in conjunction with the last two sentences of that paragraph, it is clear that the weekly compensation required to be paid is all compensation "accruing" after the

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Award. In this case the date of the "Commission's Award" was all compensation, "accruing" after March 8, 2011.

In further confirmation of this interpretation of the Act, in 2007 the language of §42-17-60 was changed to specifically require payment of only weekly payments after the date of appeal to the Court of Appeals and a specific provision was added to provide that any unpaid portion of an Award would accrue interest. The provision of §42-17-60 in the last paragraph prior to July 1, 2007 concerning payment stated that the appeal does not operate as a supersedes and

"thereafter the employer is required to make payment of the Award involved in the appeal . . ."

And after July 1, 2007, it was changed to read,

"the appeal does not operate as a supersedes and, after that time, the employer is required to make weekly payments of compensation . . . until the questions have been fully determined."

And to that, a sentence was added that, "interest accrues on any unpaid portion of the Award . . ." Therefore the Legislature amended the Statute to provide that the employer was only responsible for payment of weekly payments after the appeal and interest accrued on the unpaid portion. There is no reference to "payment of the Award". The Legislature therefore clearly changed but also reaffirmed the intent and meaning of the pre-2007 language and requirement of the Act.

Thus, defendants are required to make payment of the weekly compensation benefits under the Award that have accrued from

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March 8, 2011 through the date that benefits were restarted in this matter. The Act under SC Code §42-9-240 requires that payment under an Award is to be paid within fourteen (14) days which this Court finds to be reasonable as to payment of the accrued Award in this case. The Act also provides that if payment is not made within that time period pursuant to SC Code §42-9-90 a 10% penalty is to be added to the amount due under §42-9-240 plus interest shall accrue at the legal rate of interest after that date. This Court finds both of those sections to be appropriate and reasonable.

Further, SCACR Rule 241(a) and (b) reaffirms that payment is not stayed by an appeal of the Order of this Court ordering payment and that this Court retains jurisdiction and, "the authority to enforce" its Order.

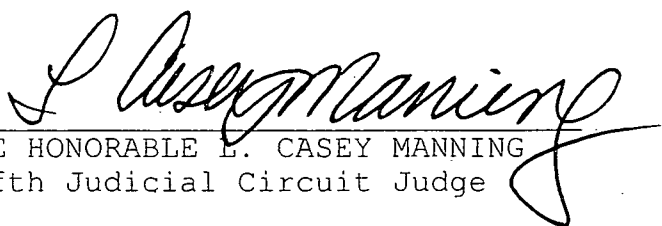
Finally, the motion sets out that the Claimant had made demand for payment of the accrued Award and that as of November 10, 2015 the accrued temporary total disability weekly compensation benefits due and owing under the Award was the amount of \$123,791.00. The Defendants agree that they did not restart weekly compensation benefits until thirty (30) days after that date, meaning December 10th and therefore a period of thirty (30) days should be added to that figure as being due and payable to the claimant at this time. The defendants shall therefore pursuant to this Order calculate the amount that is to be paid to the claimant as accrued compensation under the Award of the Commission including this thirty (30) day period.

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THEREFORE IT IS ORDERED THAT the motion is granted and the defendants shall make immediate payment to the claimant in a lump sum of all accrued weekly compensation payments that have accrued under the Award of the Commission which awarded reinstatement of weekly compensation benefits as of March 8, 2011 and before weekly compensation payments were reinstated.

IT IS FURTHER ORDERED THAT pursuant to the authority vested in the Executive Director of the State Accident Fund under SC Code §42-7-20, the Executive Director shall direct that this payment of the Award be made and that such payment shall be made within fourteen (14) days of the date of this order. If payment pursuant to this Order is not made within fourteen (14) days, upon notice, pursuant to SC Code §42-17-60 (as amended through 2007) and SCACR, Rule 241(a) and (b) this Court will issue a Rule to Show Cause to enforce the Order of this Court.

AND IT IS SO ORDERED.


THE HONORABLE L. CASEY MANNING
Fifth Judicial Circuit Judge

Dated: July 5, 2016

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CERTIFICATE OF SERVICE

C/A NOS.: 2015-CP-40-07468
&
2015-CP-40-07380

I hereby certify that I have on this day served the following in the matter of Ted Polansky v. SC Office of Attorney General with a copy of the and Proposed **Order Ordering Payment of Accrued Award Pursuant to SC Code §42-17-60** addressed as follows:

VIA EMAIL - tmiles@mckayfirm.com

AND US MAIL

Temus C. Miles, Jr., Esquire
McKay Law firm
1303 Blanding Street
Columbia, South Carolina 29201



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
28 day of June, 2016.



Notary Public for South Carolina (L.S.)

My Commission Expires: 2/4/24

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