

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE) IN THE COURT OF COMMON PLEAS
) Civil Action No. 2020-CP-21-00755

Otis Nero, Employee,)

Claimant,)

vs.)

SC Department of Transportation,)
Employer, and State Accident Fund,)
Carrier,)

Defendants.)

ORDER

RECEIVED

Jun 30 2020

SC Court of Appeals

This matter was heard by the Court on May 29, 2020, on Defendants’ Motion to Alter or Amend; and Motion for Relief from Order of Execution and Motion for Stay of Execution.

This is a Workers’ Compensation matter. By Order of August 5, 2014, the Single Commissioner of the Workers’ Compensation Commission Ordered inter alia that the Defendants Ashall pay the Claimant benefits at the weekly compensation rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars from June 20, 2012 until the date of this Order and continuing until further Order of this Commission.

Thereafter, the case had a long appellate history; culminating in the Court of Appeals reinstating the Order of the Single Commissioner by Order of June 26, 2019. The Defendants petitioned certiorari to the Supreme Court and certiorari was denied by the Supreme Court by Order dated February 12, 2020.

On March 5, 2020 Plaintiff filed, inter alia, the August 5, 2014 Single Commissioner’s Order and the June 26, 2019 Court of Appeals’ Decision with the Court of Common Pleas.

The Workers' Compensation Act, S.C. Code §42-17-70 provides:

Any party in interest may file in the court of common pleas of the county in which the injury occurred ... an award of the commission affirmed upon appeal, whereupon such court shall render judgment in accordance therewith and notify the parties.

Pursuant to S.C. Code §42-17-70, on March 11, 2020, this Court calculated and entered Judgment as follows:

A. Indemnity Benefits

The Single Commission ordered the payment of weekly compensation benefits at the weekly rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars from June 20, 2012, to the date of the Single Commission Order and continuing until further Order of the Commission. That amount, as of March 6, 2000, totaled One Hundred Thirty-Nine Thousand Three Hundred Twenty-One and 14/100 (\$139,321.14) Dollars; representing weekly benefits of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars for the 402-week period of June 20, 2012 - March 6, 2020.

B. Interest

The Workers' Compensation Act, S.C. Code §42-9-240 provides:

Date on which compensation payable under award becomes due.

The first installment of compensation payable under the terms of an award by the commission or under the terms of a judgment of a court upon an appeal from such an award shall become due seven days from the date of such an award or from the date of such a judgment of the court, on which date all compensation then due shall be paid, including interest from the original date of the award at the maximum legal rate.(emphasis added).

By Order of the Supreme Court, 2014-01-03-01, dated January 3, 2014, for the period of January 15, 2014 through January 14, 2015, the legal rate of interest is 7.25% compounded annually. The Single Commission Order was issued on August 5, 2014. Therefore, as of March 6, 2020, the total amount of interest owed

was Thirty-Three Thousand Nine Hundred Ninety-Five and 22/100 (\$33,995.22) Dollars.

C. Ten (10%) Percent Penalty

The Workers' compensation Act, S.C. Code §42-9-90 provides:

... if any installment of compensation payable in accordance with the terms of an award by the commission is not paid within fourteen days after it becomes due, as provided in Section 42-9-240, there shall be added to such unpaid installment an amount equal to ten per cent thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

No payment was made within fourteen (14) days after it became due, i.e. February 26, 2020. (see attached Certificate of Non-payment). A ten (10%) percent penalty shall be added. Ten (10%) percent of the amount above is \$17,331.64.

Therefore, the total amount of the judgment, (including interest and penalties), as of March 6, 2020, is \$190,648.00, along with weekly benefits in the amount of \$346.57.
(Form 4 Order, 03/11/20).

On March 24, 2020, Defendants filed a Motion to Alter or Amend and on March 27, 2020, Defendants filed a Motion for Relief from Order of Execution and Motion for Stay of Execution. The Court of Common Pleas heard oral arguments on those Motions on May 29, 2020.

After very careful and deliberate consideration of arguments presented to the Court, memorandums submitted, exhibits, Orders, statutes, case law, and all other relevant evidence, the undersigned hereby denies Defendants' Motions.

The Court finds that the South Carolina Appellate Court reinstated the Opinion of the Single Commissioner and made a final decision entitling the Claimant to an award. Under the authority of S.C. Code §42-17-70, this Court properly entered judgment thereon.

The Court notes that the Defendant did discuss miscalculation of interest and penalties in Defendants' Motion to Alter or Amend and For Relief. However, the issue was never properly raised and fleshed out before the Court at the hearing. Therefore, this Court holds that if the Defendants allege some specific mistake in the arithmetic of the Court's calculations of Judgment, including the calculation of indemnity benefits, interest and penalty, the Defendants may move for recalculation of damages pursuant to S.C.R.P. Rule 60(b) and have an additional hearing to fully flesh out any issues of miscalculation.

IT IS SO ORDERED.

At Chambers,
Florence, South Carolina

June _____, 2020

WILLIAM H. SEALS, JR., JUDGE
TWELFTH JUDICIAL CIRCUIT



Florence Common Pleas

Case Caption: Otis Nero VS Department Of Transportation South Carolina ,
defendant, et al
Case Number: 2020CP2100755
Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2020-06-30 08:19:50 page 5 of 5

ELECTRONICALLY FILED - 2020 Jun 30 11:09 AM - FLORENCE - COMMON PLEAS - CASE#2020CP2100755