

**DECISION AND ORDER
OF THE
APPELLATE PANEL
OF THE
SOUTH CAROLINA WORKERS COMPENSATION COMMISSION**

**COMMISSION PANEL: THE HONORABLE T. SCOTT BECK, CHAIR; THE
HONORABLE R. MICHAEL CAMPBELL, II; THE HONORABLE GENE
MCCASKILL**

SCWCC NO. 1611416

Jon A. Hinson,

Employee/Claimant,

v.

BS Telecommunications,

Employer, and

Old Republic Insurance Co.,

Carrier/Defendants.

RECEIVED

MAY 11 2022

SC Court of Appeals

Hearing held in Columbia, South Carolina on January 24, 2022.
Per notice timely and properly served upon all Parties of Interest.

Appearances: Alton L. Martin, Jr., Esquire for Claimant/Respondent

Michael R. Patterson, Esquire for Defendants/Appellants
Christopher C. Minglehoff, Esquire for Defendants/Appellants
Jared C. Williams, Esquire for Defendants/ Appellants

STATEMENT OF THE CASE

This matter involves a Motion to Compel filed for payment of medical expenses referenced in a Clincher. The Clincher was signed by the Claimant and attorneys for each party; filed with the South Carolina Workers Compensation Commission; and duly approved on March 23, 2020. According to its terms, Dr Mullen at Poinsett Psychiatric was an authorized medical provider. (3/23/20 Clincher, p. 2) Further, the Clincher provided: "Employer and Carrier will pay any previously authorized medical expenses to medical providers that were incurred prior to February 13, 2020 but have inadvertently not been paid as of the date of this agreement . . ." (3/23/20 Clincher, p. 3).

Prior to February 13, 2020, Claimant incurred authorized medical expenses for treatment by Dr Mullen in the amount of \$3,825.00. Defendants inadvertently failed to pay any of these authorized medical expenses. Claimant eventually paid \$3,625.00 of these expenses out-of-pocket in order to continue treating with Dr. Mullen.

After the Clincher was approved, Claimant's attorney contacted Defendants about payment of Dr. Mullen's medical expenses several times without success. On April 2, 2021, one year after the Clincher was filed, Claimant filed his Motion to Compel seeking payment of Dr. Mullen's medical expenses, as well as attorney's fees and fines per SC Code Ann. 42-3-175. Thereafter, Defendants issued a single payment of \$200.00 to Dr Mullen's office.

At the Motion hearing on April 28, 2021, Defendants argued that they were only responsible for payment of authorized medical treatment that had "inadvertently not been paid as of the date of this agreement," and since Claimant had already paid the \$3,625 out of pocket, that amount was not unpaid. Defendants also argued that a signed, filed, and duly approved clincher is not an order unless it is also signed by a Commissioner. Accordingly, Defendants argued the

Commission had no authority to assess attorney's fees or impose a fine under §42-3-175 because that statute only applies to an order.

Claimant argued that the Commission has jurisdiction under SC Code Ann. §42-3-175 to impose sanctions on Defendants for failing to comply with an approved Clincher. A Clincher is a binding order without a Commissioner's signature, when the claimant is represented and the Clincher is properly executed, filed and approved per SC Code 42-9-390, and SC Code Regs 67-801 and 67-803. Two prior Consent Orders reflected that payment of Dr. Mullen's bills were solely Defendants' duty to pay. Only Defendants could have "inadvertently" failed to pay Defendants' obligations. Claimant could not "inadvertently" fail to pay something that he had no duty to pay, and Claimant's payment of a portion of the bill did not alter Defendants' obligation.

The Single Commissioner's Decision and Order was filed on July 13, 2021, containing the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

- 1. On March 19, 2020, Claimant, Claimant's attorney, and Defendants' attorney fully executed a mutually agreed upon Clincher.*
- 2. On March 23, 2020, the signed Clincher was filed and approved by the South Carolina Workers Compensation Commission.*
- 3. The Clincher expressly provided that "[Defendants] will pay any previously authorized medical expenses to medical providers that were incurred prior to February 13, 2020, but had inadvertently not been paid as of the date of this [Clincher.]..."*
- 4. Authorized medical expenses in the amount of \$3,825.00 were incurred by Claimant from Dr. Mullen with Poinsett Psychiatric, prior to February 13, 2020.*

5. *After the Clincher was approved, Claimant's attorney contacted Defendants on several occasions regarding payment of Dr. Mullen's bill, based on Claimant's Exhibit 2 and 3.*
6. *During the course of his claim, Claimant made out-of-pocket payments of \$3,625.00 to Dr. Mullen's office, in order to continue receiving treatment.*
7. *A Consent Order dated August 16, 2017 provided that Defendants would reimburse Claimant for treatment he had already received from Dr. Mullen and provide causally-related treatment as recommended by Dr. Mullen, based on Claimant's Exhibit 1.*
8. *Defendants never reimbursed Claimant, and as of the date of the Clincher, Defendants had inadvertently failed to pay the \$3,825.00 in authorized medical expenses from Dr. Mullen's office that Claimant incurred prior to February 13, 2020.*
9. *On April 2, 2021, Claimant filed a Motion to Compel payment of authorized medical expenses incurred prior to February 13, 2020, in accordance with the Clincher. Claimant's Motion also sought attorney's fees and the possible imposition of fines per 42-3-175*
10. *On April 12, 2021, Defendants made a payment of only \$200.00 of the \$3,825.00 total authorized medical expenses incurred by Claimant from Dr. Mullen's office. This was the first and only payment by Defendants for authorized medical expenses from Dr. Mullen's office.*

11. *Defendants argued that the Clincher is not an Order as contemplated by § 42-3-175 and therefore the South Carolina Workers' Compensation Commission lacks authority to impose attorney's fees or fines in this matter. I find this argument unpersuasive.*
12. *I find that the Clincher was signed by both parties' attorneys on March 19, 2020.*
13. *I find that the signed Clincher was properly filed and approved by the South Carolina Workers' Compensation Commission on March 23, 2020, without a Commissioner's signature, per 42-9-390 and 67-803.*
14. *I find that the Clincher was a final and binding settlement of the claim that expressly provided for payment of authorized medical expenses incurred by Claimant with Dr. Mullen's office prior to February 13, 2020.*
15. *As such, I find that this approved Clincher is an "Order" or "Award" as those terms are contemplated by S.C. Code Ann §42-3-175, whether signed or unsigned by a Commissioner.*
16. *Defendants also took the position that they are not liable for the \$3,625.00 authorized medical expenses from Dr. Mullen's office that Claimant incurred prior to February 13, 2020. Defendants argue that they are only responsible for authorized medical expenses, "inadvertently not been paid as of the date of the [Clincher]." Since Defendants were aware that Claimant had already paid those authorized expenses, it is their position that those expenses could not be considered "inadvertently unpaid" as of the date of the Clincher. Basically, Defendants argue their failure to pay the \$3,625.00 was deliberate,*

not inadvertent, because the expenses had already been paid by Claimant. I find Defendants' argument unpersuasive.

17. I find the Clincher addresses the obligation to pay authorized medical expenses that were inadvertently not paid as of the date of the Clincher by the Defendants. The fact that Claimant had already paid some of the authorized expenses to Dr. Mullen's office, does not change the fact that these expenses were inadvertently not paid by the Defendants as of the date of the Clincher.

18. Additionally, the emails submitted by Claimant as Exhibits 2 and 3 supports that Claimant bargained for and expected to be reimbursed for Dr. Mullen's authorized medical expenses as part of the Clincher negotiations. The email gives further support to Claimant's argument that the Defendants agreed to pay Dr. Mullen's expenses that they had inadvertently not paid during the course of the claim.

19. I find Defendants do not have "good cause" for failing to pay the \$3,625.00 to Dr. Mullen's office after the Clincher was approved. To argue that they did not have to pay medical expenses because the Claimant had already paid them is inconsistent with the language of the Clincher and evidence submitted at the hearing.

20. I find Defendants wilfully disobeyed the terms of the Clincher by refusing to pay \$3,625.00 for Dr. Mullen's authorized medical expenses paid out of pocket by Claimant.

21. As for the \$200.00 of the \$3,825.00 balance that Defendants concede they owed, they take the position that the failure to pay for 13 months was inadvertent and accidental; that the

issue was resolved since they paid the \$200.00 prior to the Motion hearing; and, that their 13-month delay caused no prejudice. I also find these arguments unpersuasive.

22. *I find Defendants do not have "good cause" for failing to pay the \$200.00 to Dr. Mullen's office for nearly 13 months after the Clincher was approved. Defendants were admittedly aware of an outstanding balance and had been contacted several times by Claimant's attorney regarding payment before the Motion to Compel was filed.*
23. *Although not required by 42-3-175, I find Claimant was prejudiced by Defendants' delay. Defendants were aware a balance was owed at the time the Clincher was entered. Claimant's attorney contacted Defendants several times after the Clincher was approved regarding payment without success. Defendants do not dispute the amount was owed. Payment was only made after a Motion to Compel was filed. Claimant incurred the time and expense of having a Motion prepared and filed. Presumably the \$200.00 would have remained unpaid, but for Claimant's Motion. Claimant was prejudiced.*
24. *I find Defendants wilfully disobeyed the terms of the Clincher by their excessive delay in paying the \$200.00 for Dr. Mullen's authorized medical expenses that they concede was owed, for a period of nearly 13 months after the Clincher was approved, and then only after a Motion To Compel was filed.*
25. *Based on the evidence provided at the hearing and information contained in the South Carolina Workers' Compensation Commission file, I find Defendants shall pay the \$3,625.00 worth of authorized medical expenses previously paid out-of-pocket by*

Claimant, directly to Dr. Mullen's office in accordance with the South Carolina Workers' Compensation Commission's Medical Fee Schedule.

26. I find Defendants shall pay four (4) hours of attorney's fees at the rate of \$350.00 per hour to Claimant's attorney for preparing and filing the Motion to Compel and attending the Motion hearing, and Defendants shall pay costs of \$50 for the Motion filing fee. The hourly rate for Claimant's attorney is based on his thirty (30) years of legal experience and is consistent with the going rate for claimant's attorneys with like-experience in the field of South Carolina Workers' Compensation.

27. I find Defendants shall pay a fine of \$500.00 per day from March 23, 2020, until April 12, 2021, for failing to pay the \$200.00 of authorized medical expenses that they admittedly knew to be owed for a period of 13 months after approval of the Clincher, and then only paying same after a Motion to Compel had been filed.

28. After the Clincher was approved, the continued, deliberate refusal to pay the \$3,625.00 that had inadvertently not been paid by Defendants as of the date of the Clincher, serves as an additional, stand-alone basis for the \$500 per day fine for the period of March 19, 2020, to April 12, 2021.

CONCLUSIONS OF LAW

Accordingly, pursuant to South Carolina Code §42-17-40, and §1-23-320, it is the determine of this Commissioner:

- 1. Pursuant to South Carolina Code Ann. §42-15-10 and 42-17-20, the South Carolina Workers' Compensation Commission has jurisdiction and venue is*

appropriate.

2. *Pursuant to South Carolina Code Ann., §1-23-320, and South Carolina Code Reg. 67-607, the parties received proper notice of the hearing and the issues to be addressed.*
3. *Pursuant to South Carolina Code Ann. § 42-9-390, and South Carolina Code Reg. 67-803B(2), approval of an Agreement and Final Release (Clincher) is not contingent upon a Commissioner's signature, when the Claimant is represented, both parties' attorneys sign the Agreement and Final Release, the original and two copies are filed with the Claims Department, and an official copy of the Agreement and Final Release is returned by the Commission.*
4. *Pursuant to South Carolina Code Ann. § 42-9-390, and South Carolina Code Reg. 67-803, all the parties herein were represented by counsel, and attorneys for all parties signed an Agreement and Final Release (Clincher) on March 19, 2021.*
5. *Pursuant to South Carolina Code Ann. § 42-9-390, and South Carolina Code Regs. 67-801F, 67-803B, 67-803C, the signed Agreement and Final Release (Clincher) was duly filed and approved by the South Carolina Workers' Compensation Commission on March 23, 2021, and thereafter became binding.*
6. *Pursuant to South Carolina Code Ann. § 42-9-390, and South Carolina Code Reg. 67-803, and the express terms of the Clincher, Defendants must pay \$3,625.00 for authorized medical expenses incurred prior to February 13, 2020 and inadvertently not paid by Defendants as of the date of the Clincher.*

Payment shall be made directly to Dr. Mullen's office, under the South Carolina Workers' Compensation Commission Fee Schedule.

7. *Pursuant to South Carolina Code Ann. §42-9-390, 42-3-175, and SC Code Reg. 67-803, an Agreement and Final Release (Clincher), once approved by the South Carolina Workers' Compensation Commission, is a binding "Order" or "Award" subject to the provisions of §42-3-175.*
8. *Pursuant to South Carolina Code Ann. § 42-3-175, once the Settlement and Final Agreement (Clincher) was approved, Defendants had no "good cause" for failing to pay the \$3,625.00 that Claimant had previously paid out-of-pocket for authorized medical expenses incurred prior to February 13, 2020, and Defendants deliberate failure to pay was "wilful disobedience of an order."*
9. *Pursuant to South Carolina Code Ann. § 42-3-175, once the Settlement and Final Agreement (Clincher) was approved, Defendants had no "good cause" for their 13-month delay in paying the \$200.00 for authorized medical expenses incurred prior to February 13, 2020, and Defendants excessive delay in paying only after being served with a Motion To Compel represents "wilful disobedience of an order."*
10. *Pursuant to South Carolina Code Ann. § 42-3-175, Defendants must pay Claimant's attorney fees and costs of enforcing the order, in the amount of four (4) hours of Claimant's attorney fees, and costs of \$50 for the Motion filing fee.*
11. *Pursuant to South Carolina Code Ann. § 42-3-175, Defendants must pay a fine*

in the amount of \$500.00 per day from March 23, 2020, to April 12, 2021, for wilful disobedience of an order.

ORDER AND AWARD

Defendants shall pay \$3,625 in authorized medical expenses directly to Dr. Mullen's office in accordance with the SC Workers' Compensation Commission Medical Fee Schedule; Defendants shall pay four (4) hours of Claimant's attorney's fees and \$50 in costs; and Defendants shall pay fines in the amount of \$500.00 per day from March 23, 2020, to April 12, 2021.

ISSUES ON APPEAL

Defendants timely filed a Form 30 Request for Commission Review on July 27, 2021.

Defendants raised the following issues in their Appellants' Brief:

1. Appellants fully complied with the Agreement;
2. Violation of the Parol Evidence Rule and the Law of the Case;
3. The Agreement is not an Order of the Commission;
4. South Carolina Code Ann. §42-3-175 applies only to Orders of the Commission;
5. The Hearing Commissioner made no specific findings of fact that Appellants acted without good cause;
6. The Hearing Commissioner made no specific findings of fact that an order existed, and Appellants acted in will disobedience of that order; and ,
7. The Hearing Commissioner's imposition of sanctions violated Appellants rights to due process under the U.S. and South Carolina Constitution.

(Appellants' Brief, p. 8)

FINDINGS OF THE FULL COMMISSION

This appeal was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel on January 24, 2022. The Commissioners considered the matter and **Affirm in part, Reverse in part** the decision and order of the Single Commissioner.

Reduce daily assessment under 42-3-175 to \$30 a day for a total fine of \$11,580 (386 days x \$30 a day).

ORDER

IT IS THEREFORE ORDERED that this matter is **Affirmed in part and Reversed in part** with all findings and conclusions being affirmed, with the sole exception being the daily amount of the fine imposed is reduced from \$500 per day to \$30 per day from March 23, 2020, to April 12, 2021, for a total amount of \$11,580.00 in fines due.

AND IT IS SO ORDERED



Commissioner T. Scott Beck, Chair



Commissioner R. Michael Campbell, II



Commissioner Gene McCaskill

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 Valerie Deller on April 20, 2022