

State of South Carolina

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Workers' Compensation Commission

Proposed Regulation 67-1801 Mediation

Commission Approved January 17, 2012

67-1801. Mediation.

- A. This mediation regulation is established to resolve disputes without the necessity of a hearing. The purpose is to afford a meaningful opportunity to the parties to achieve an efficient and a just resolution of their disputes in a timely and a cost-effective manner.
- B. A Commissioner has the discretion to order mediation in any pending claim before the Commissioner and to select a duly qualified mediator.
 - (1) A Commissioner must retain jurisdiction of the claim solely for those issues being mediated.
 - (2) A Commissioner does not retain jurisdiction of the claim for the life of the claim, only until those pending issues are resolved.
- C. Required Mediation:
 - (1) Claims arising under §42-9-10, or claiming permanent and total disability pursuant to §42-9-30 (21), occupational disease cases, third-party lien reduction claims, contested death claims, mental/mental injury claims, and cases of concurrent jurisdiction under the South Carolina Workers' Compensation Act and the Federal Longshore and Harbor Workers' Compensation Act must be mediated prior to a hearing.
 - (a) In contested death claims, a Commissioner must still make a finding that a good faith dependency investigation has been completed.
 - (b) Except for contested death claims, all claims listed in section (C)(1) would apply only to claims where compensability of the accident is admitted by the employer/carrier.

- (2) Claims involving multiple employees arising out of employment with the same Employer, whether or not compensability has been admitted, shall be subject to a scheduling order and shall be mediated prior to a hearing. Participation in mediation in no way constitutes an admission of compensability at any subsequent proceeding.
 - (3) A Commissioner's authority to order mediation in any pending claim is not limited by the claims listed in section (C) (1) and (C) (2).
- D. The parties may request mediation by the proper submission of a Form 21, Form 50, Form 51, or the response to the Form 21, indicating a request for mediation. Except as provided in section (C), either party may object to mediation by the proper submission of the Form 21, Form 50, Form 51, or the response to the Form 21. If the parties do not agree to mediation, pursuant to this section, then the case shall be set by the Judicial Department in the normal course of the docket scheduling.
- E. The parties may consent to use any mediator who is duly qualified.
 - (1) The mediator must be certified as a mediator per the certification process established by the South Carolina Bar Association.
- F. The parties must select a mediator within ten (10) days of the filing of the Form 51 or the response to the form 21, and must promptly notify the Commission of the mediator and proposed mediation date.
- G. The mediation must be completed within sixty (60) days of the filing of the Form 51 or the response to the form 21, unless otherwise agreed to by the parties. If the mediation is not completed within the sixty (60) day timeframe then the case shall be set by the Judicial Department in the normal course of the docket scheduling.
- H. If the parties cannot agree on a mediator, the Commission shall appoint a duly qualified mediator for them.
- I. In addition to their attorney being present, each party shall provide a representative, who shall attend the mediation in person or via telephone. The representative shall have authority to enter into negotiations, in good faith, to resolve the issues in dispute. If the representative attends via telephone, they shall be available by telephone for the duration of the mediation. Reasonable notice shall be provided to the opposing party concerning attendance via telephone, prior to the mediation.
- J. All communications and statements that take place within the context of mediation shall be confidential and not subject to disclosure. Such communications or statements shall not be disclosed by any mediator, party, attorney, or attendee and may not be used as

evidence in any proceeding. An executed agreement resulting from mediation is not subject to the confidentiality requirements described above.

- K. Neither the mediator nor any third-party observer may be subpoenaed or otherwise required to testify concerning a mediation or settlement negotiation in any proceeding. The mediator's notes shall not be placed in the Commission's file, shall not be subject to discovery, and shall not be used as evidence in any proceeding.
- L. The parties shall share the cost of mediation equally, unless otherwise agreed by the parties, or as otherwise ordered by the Commission.
- M. Any party who refuses or neglects to act in good faith during the mediation may be subject to a fine not to exceed the actual cost of the mediation. Any party who believes this provision has been violated may file a Motion for a Rule to Show Cause before the jurisdictional Commissioner for purposes of assessing fines and penalties. The parties shall have the right of review and appeal as in other cases.
- N. A Form 70 shall be filed by the Mediator with the Judicial Department at the conclusion of the mediation. A Form 70 shall not become a part of the Commission's file and will solely be used for tracking purposes.