

State of South Carolina

1333 Main Street, 5th Floor
P.O. Box 1715
Columbia, S.C. 29202-1715



TEL: (803) 737-5700
www.wcc.sc.gov

Workers' Compensation Commission

**Report of the Presiding Officer, Chairman T. Scott Beck
Proposed Changes to Regulations to Chapter 67
Document No. 4735**

January 5, 2017

Pursuant to Section 1-23-111 of the SC Code of Laws, 1976 the following is a report subsequent to the Public Hearing on January 5, 2017 at which time and place the Commission received public comment on the proposed changes to regulations to Chapter 67. This report includes the findings as to the need and reasonableness of the proposed changes.

Background

At the regular business meeting on September 19, 2016, the Commission approved the language of the Notice of Drafting on Proposed Regulations, Chapter 67. The Notice of Drafting was published in the October 28, 2016 issue of the *State Register*. Deadline to receive comments on the Notice of Drafting was 5:00 p.m. on November 7, 2016. No comments were received on the Notice of Drafting.

At the regular business meeting on November 14, 2016, the Commission approved the language of the proposed regulations. The proposed regulations were published in the November 25, 2016 issue of the *State Register*. Deadline to receive comments on the proposed regulations was 5:00 p.m. on Monday, December 26, 2016. No comments were received on the Proposed Regulations.

The proposed changes (new language is underlined):
67-201. Application of Regulations.

A. These regulations are entitled to a liberal construction in the furtherance of the purpose for which the South Carolina Workers' Compensation Law is intended.

B. In doubtful cases, the application of these regulations shall be construed in favor of the injured employee.

C. Unless the context otherwise requires, the regulations in this Article shall be construed to apply to all levels of proceedings before the Workers' Compensation Commission.

67-205. Filing with the Commission, Defined.

A. The date of filing a form or document with the Commission is provided in subsections B, C, and D, ~~below~~.

B. A form or document delivered to the Commission electronically, by first class mail, or by hand delivery is filed the date of receipt in the Commission's offices as indicated by the earliest date stamped on the form or document by an official Commission stamp with the exception of forms and documents delivered pursuant to R.67-205C, ~~and R.67-205D, and R.67-205E~~.

C. A form or document delivered to the Commission by certified or registered mail is deemed filed the date of deposit in the United States Postal Service as indicated by the date of postmark.

D. A form or document transmitted to and received by the Commission electronically on or before 11:59:59 p.m. shall be considered filed with the Commission on that date, provided it is subsequently accepted after review by the appropriate department of the Commission.

E. The following forms or documents are deemed filed on the date on the accompanying certificate of service properly addressed to the Commission: Forms ~~15(HH)~~; 50, 51, 52, 53, 54, 55, 58, 30, and appellate briefs.

67-207. Requesting a Hearing, Claimant.

A. ~~To request a hearing, file~~ A hearing shall be requested by filing a Form 15, Form 50, or Form 52 with the Commission's Judicial Department as provided below:

(1) ~~The party shall~~ Mark mark the box at the signature line on the Form 50 or Form 52 which states, "I am requesting a hearing," ~~or sign and date under Section III of the Form 15 "Notice to Injured Worker or Legal Representative When Temporary Compensation Has Been Stopped."~~

(2) ~~Address and deliver the~~ The form shall be addressed and delivered to the Judicial Department pursuant to R.67-205.

(3) ~~The Commission serves~~ shall serve the Form 15, Form 50, or Form 52 on the employer ~~according~~ pursuant to R.67-210 and R.67-211.

(4) When under the laws of this State the employer and its insurance carrier, if any, are required by law to be represented by an attorney in a contested case hearing, an attorney shall be designated according to R.67-603.

(5) The WCC file number or Coverage Coding Form must be included.

B. Filing When a party files a Form 50 or Form 52 with the Commission requesting a hearing, the Form 50 also files serves to file the claim if a claim has not been filed before.

67-211. Service of Forms and Documents.

A. Claimant's Request for Hearing.

(1) When the claimant is represented by an attorney, the attorney shall serve a copy of the ~~Form 15(HH)~~, Form 50, or Form 52 hearing request electronically or by depositing the form in the United States Postal Service first class postage, addressed to the opposing parties pursuant to R.67-210. Service is deemed complete upon mailing or electronic transmission unless the form is returned or the sender's or recipient's electronic server indicates that the transmission was unable to be completed. If the form is returned or unable to be transmitted, service may be completed pursuant to the South Carolina Rules of Civil Procedure. A hearing will not be set until service is complete and proof of service is filed with the Judicial Department.

(2) When the claimant is not represented by an attorney, the claimant may serve the ~~Form 15(HH)~~, Form 50, or Form 52 hearing request as set forth in A(1) ~~above~~. When the claimant does not serve the hearing request, the Commission ~~will~~ must serve the request electronically or by depositing the form in the United States Postal Service first class postage, addressed to the opposing parties per R.67-210.

B. Employer's Representative's Request for Hearing and/or Response to a Request For Hearing.

(1) When the claimant is represented by an attorney, the employer's representative shall serve a copy of the Form 21, Form 51, or Form 53 electronically or by depositing the form in the United States Postal Service first class postage, addressed to the claimant's attorney. Service is deemed complete upon mailing or electronic transmission unless the form is returned or the sender's or recipient's electronic server indicates that the transmission was unable to be completed. If the form is returned or unable to be transmitted, service may be completed pursuant to the South Carolina Rules of Civil Procedure. A hearing will not be set until service is complete and proof of service is filed with the Judicial Department.

(2) When the claimant is not represented by an attorney, the employer's representative shall serve a copy of the Form 21, Form 51, or Form 53 by personal service or by certified mail, return receipt requested, delivery restricted to the addressee. When service is by certified mail, service is complete as of the date of the addressee's receipt of the form as indicated by the signed certified mail return receipt. If the form is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure. A hearing will not be set until service is complete and proof of service is filed with the Judicial Department.

C. Other Forms and Documents.

(1) Unless otherwise specified in this Chapter, ~~serve~~ other forms and documents shall be served by the parties electronically or by depositing the form or document in the United States Postal Service first class postage, addressed to the opposing parties per R.67-210. Service is deemed complete upon mailing or electronic transmission unless the document is returned or the sender's or recipient's electronic server indicates that the transmission was unable to be completed. If the document is returned or unable to be transmitted, service may be completed pursuant to the South Carolina Rules of Civil Procedure.

(2) When the claimant is not represented by an attorney, the claimant may serve a form or document according to C(1) ~~above~~. When the claimant does not serve the form or document, the Commission ~~will~~ shall serve it by depositing the form or document in the United States Postal Service first class postage, addressed to the opposing parties per R.67-210.

(3) Hearing notices may be served electronically pursuant to R.67-210. All unrepresented claimants and uninsured employers shall be served by depositing the notice in the United States Postal Service, first class postage ~~per~~ pursuant to R.67-210. Service is deemed complete upon mailing or electronic transmission unless the form is returned or the sender's or recipient's electronic server indicates that the transmission was unable to be completed.

67-213. Service of Orders, Hearing Notices, and Review Hearing Notices.

A. The Commission serves orders electronically, by certified mail, return receipt requested or by deposit in the United States Postal Service, first class postage, addressed to the parties ~~according~~ pursuant to R.67-210.

(1) Service is made by delivering a copy of the order to a an unrepresented party ~~representing himself or herself~~ or to the attorney representing the party.

(2) When service is made by certified mail, the date of service is the date of the addressee's receipt indicated by the certified mail return receipt. When service is made by first class mail, five days are added to the date of mailing. Service by first class mail is deemed complete five days after the date of deposit in the United States Postal Service. Service made electronically is deemed complete five days after the date the electronic transmission is completed, unless the Commission's electronic server indicates that the transmission was unable to be completed.

B. The Commission serves hearing notices and Form 31, Review Hearing Notices, electronically or by deposit in the United States Postal Service first class postage, addressed to the parties according

to R.67-210. Service is deemed complete upon mailing or electronic transmission unless the form is returned or the Commission's electronic server indicates that the transmission was unable to be completed. All unrepresented claimants and uninsured employers shall be served by depositing the notice in the United States Postal Service, first class postage per R.67-210. The Commission may, but is not required to, serve such notices by certified mail, return receipt requested. Service by certified mail is complete upon receipt.

C. When an attorney represents a party, the party is not served. If the mailing is returned, service may be completed ~~as in~~ pursuant to R.67-211.

67-214. Subpoenas.

A. ~~To subpoena~~ A party may subpoena a person or document(s), ~~complete and serve by completing and serving~~ a Form 27 as set out ~~below~~ forth in this section.

B. When the party issuing the Form 27 is represented by an attorney, the attorney shall complete and sign the Form 27.

C. ~~When the party issuing the Form 27 is not represented by an attorney, the party may obtain a blank Form 27 signed by an authorized representative of the Commission.~~ A party not represented by an attorney may obtain a Form 27 Subpoena signed by an authorized representative of the Commission by (1) completing but not signing the Form 27, and (2) submitting the unsigned Form 27 to the Commission's Judicial Department to be signed by an authorized representative of the Commission.

D. When the ~~individual~~ person being served is represented by an attorney, ~~serve~~ the Form 27 shall be served by depositing the Form 27 in the United States Postal Service, first class postage addressed to the attorney. Service is deemed complete upon mailing, unless the form is returned. If the form is returned, service may be completed pursuant to South Carolina Rules of Civil Procedure.

E. When the ~~individual~~ person being served is not represented by an attorney, ~~serve the individual~~ the Form 27 shall be served on the person by personal service or by certified mail, return receipt requested, delivery restricted to the addressee. When service is by certified mail, service is complete on the date of the addressee's receipt of the form as indicated by the signed certified receipt. If the form is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure.

F. ~~Do not file the Form 27 with the Commission.~~ A party is not required to copy the Commission when serving a Form 27 in accordance with subsections D. and E. When the Form 27 is to be used at a hearing, the person sending the Form 27 shall retain a copy and proof of service to be presented at the hearing as necessary.

G. The signature of an attorney on a Form 27, or the written request to the Commission for the execution of a Form 27 by an unrepresented party, constitutes a certification by the attorney or party that he or she has read the Form 27; that to the best of his or her knowledge, information, and belief there is good ground(s) to support it; that it is not being presented for any improper purpose such as to harass, cause unnecessary delay, or increase the cost of litigation; and that it is only seeking information relevant to a party's claim or defense.

H. ~~An individual~~ A person may contest a Form 27 by filing and serving a motion to quash or modify pursuant to R.67-215.

67-215. Motions.

A. This regulation governs motions practice at all levels of proceedings before the Commission. A party may file a motion when a form is not applicable. The Commission will accept motions including, but not limited to, a motion

(1) Relating to a subpoena or discovery;

- (2) Relating to the appointment of a Guardian ad Litem;
- (3) Relating to an attorney's appearance, withdrawal, or fee;
- (4) Relating to a claim pending Commission review;
- (5) Relating to postponing or adjourning a hearing;
- (6) Relating to self-insurance privileges;
- (7) Relating to penalties and or interest;
- (8) Relating to third party practice.

B. The Commission will not address a motion involving the merits of the claim, including, but not limited to, a motion for

- (1) ~~For~~ dismissal; or
- (2) ~~For~~ summary judgment.

The single Commissioner or Full Commission will entertain motions to reconsider an order, opinion, or award if the purpose of the motion is not an attempt to reargue the merits of the dispute. Any motion for reconsideration must be made within five (5) days of the date that the order, opinion, or award is served, and shall not be made if any party has already filed an appeal of the order, opinion, or award. If a motion for reconsideration is properly filed consistent with the provisions of this subsection, the order, opinion, or award under reconsideration is not considered final until the motion for reconsideration has been disposed of by the single Commissioner or Full Commission.

C. The Commission does not provide a form for a motion. A motion shall contain a complete caption of the case including the title of the action, the state and county in which the injury occurred, the Commission's name, the workers' compensation file number, and a designation of the relief or order sought.

D. The body of the motion shall contain numbered paragraphs each limited to a statement of a single set of circumstances. The final paragraph of the motion shall state specifically the relief or order sought.

(1) If the grounds on which the motion or reply depend is based on the existence of facts not in the Commission's file, the moving party shall file an affidavit or affidavits evidencing those facts. The opposing party may file an affidavit or affidavits in reply.

(2) If the motion or reply depends on the existence of facts in evidence or are admitted in forms on file with the Commission, the party shall cite the document and page number.

E. When the claimant or an uninsured employer is not represented by an attorney, the moving party shall serve the motion by personal service or by certified mail, return receipt requested, delivery restricted to the addressee.

(1) When service is by certified mail, service is complete the date of the addressee's receipt of the mailing as indicated by the signed certified return receipt. Otherwise, the moving party shall serve the motion by any of the methods listed or by depositing the motion in the United States Postal Service, first class postage, addressed to the appropriate party.

(2) If the mailing is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure.

F. The moving party shall file the motion and proof of service with the Judicial Department. ~~The moving party~~ and may attach a memorandum in support of the motion. The opposing party may file a memorandum in reply within ten days of service of the motion. The parties may agree to an extension by filing a written consent. Failure to respond is deemed a general denial. No further memoranda are allowed, unless requested by a Commissioner or the Commission.

G. The jurisdictional commissioner or Full Commission, if an appeal is pending, may consider the motion after the opposing party has had ten ~~days~~ days' notice of the motion, and shall grant or deny the relief requested.

(1) The jurisdictional commissioner may hear the parties motion in any county or by telephone conference call; however, a hearing is not ~~necessary~~ required.

(2) The jurisdictional commissioner shall issue a written decision to be filed with the record and served on all parties.

H. All motions filed by a party represented by an attorney shall contain an affirmation that prior to filing the motion, the movant's counsel has communicated, verbally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation (i) would serve no useful purpose or (ii) could not be timely held.

67-413 Periodic Report.

A. The employer's representative shall file a Form 18, Periodic Report, or the EDI equivalent Sub Annual (SA), as follows:

(1) Six months after the alleged date of injury and each six months thereafter until the Commission's file is closed;

~~(2) To request an informal conference;~~

~~(3) Within thirty days of service of a claimant's Form 50 or Form 52 request for a hearing or request for an informal conference; and~~

(4) At the request of the Commission.

~~B. The employer's representative may file a Form 18 at any time to transmit a message to the Commission.~~

67-504. Terminating Payment of Temporary Total or Temporary Partial Compensation During the First One Hundred Fifty Days After Employer's Notice of the Accident.

A. The employer's representative may terminate or suspend temporary compensation during the first one hundred fifty days after the employer ~~has received~~ notice of the injury ~~according pursuant~~ to Section 42-9-260. When compensation is terminated or suspended, the employer's representative shall complete Section I and Section II of the Form 15, Temporary Compensation Report. The employer's representative shall file the Form 15 immediately with the Claims Department and shall serve ~~two copies of~~ the Form 15 immediately on the claimant ~~according pursuant~~ to R.67-211 with documentation attached as to the reason for termination or suspension.

B. To terminate or suspend compensation pursuant to Section 42-9-260(B)(2), the employer's representative must obtain a signed Form 17.

C. The claimant may request a hearing to dispute the termination or suspension of temporary compensation by completing ~~Section III of the Form 15~~ a Form 50 Request for Hearing and filing it ~~according pursuant~~ to R.67-207.

67-611. Pre-hearing Brief.

A. A claimant who is ~~representing himself or herself~~ not represented by an attorney is not required to file a Form 58, Pre-hearing Brief.

(1) If the claimant elects to file a Form 58, the claimant must mail the Form 58 to the Commissioner's office identified on the hearing notice.

(2) The Commissioner's office ~~will~~ shall send a copy of the Form 58 to the employer's attorney.

B. Each attorney representing a party at a hearing shall file and serve a Form 58 according to the following:

(1) ~~File a~~ A Form 58 and proof of service must be filed at least ten days before the hearing with the Hearing Commissioner's office identified on the hearing notice. ~~Complete the~~ The Form 58 must be complete and give set forth the names and addresses of persons known to the parties or counsel to

be witnesses concerning the facts of the case and indicate whether or not written or recorded statements including video recordings and/or transcribed audio recordings have been taken from ~~one of the witnesses~~ any witness including the claimant, and indicate who has possession of same. A party ~~is under a duty to~~ shall promptly supplement a response with respect to any question directly addressed on the form and amend a response if the party obtains information upon the basis of which the party knows the response was incorrect when made, or the party knows the response, ~~though~~ though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(2) All amendments and supplements to a Form 58 must be made at least 5 days prior to the date of the hearing. Otherwise, a party seeking to supplement or amend the Form 58 must move for relief pursuant to R.67-613.

(3) Serve The Form 58 shall be served on the opposing party according pursuant to R.67-211.

(4) All blanks on the Form 58 must be completed pursuant to R.67-204.

C. The Form 58 shall remain in the Commission's file, but ~~shall~~ does not constitute evidence or become part of the record of the hearing.

D. If an attorney fails to file and serve a Form 58, the Commissioner may postpone the hearing according to R.67-613 or assess against an attorney by written order a fine ~~of up~~ not to exceed one hundred dollars.

67-613. Postponement or Adjournment of the Scheduled Hearing.

A. Each party shall arrange and present all evidence at the hearing. Testimony of a necessary witness unable to appear at the hearing may be presented by deposition.

B. A commissioner may postpone a hearing for good cause.

(1) Good cause includes but is not limited to:

(a) The attorney is actually engaged in another court;

(b) Illness;

(c) Additional discovery is necessary;

(d) A conflict of interest exists requiring another Commissioner hear the case;

(e) It is premature to hear the case.

(2) ~~To request a postponement,~~ A party requesting a postponement shall file and serve a motion pursuant to R.67-215 at least ten days ~~before~~ prior to the hearing. If the moving party can show emergency or other circumstance beyond its control, the motion may be filed and served as soon as reasonably possible before the hearing.

(3) ~~If the moving party postpones~~ postponement is granted upon the request of the moving party who requested a hearing set pursuant to Section 42-9-260, the requirement to hold the hearing within sixty days is waived. ~~The hearing will be postponed only until the following month. If the commissioner cannot hear the case by the following month, the case will be returned to the Judicial Department for reassignment.~~

(4) ~~All hearings other than those set pursuant to Section 42-9-260 are postponed only until the following month. If the commissioner cannot hear the case the following month, the hearing will not be reset until the moving party files a written request with the Judicial Department. If the nature of the claim or the relief requested changes, file a new hearing request according to R.67-207 unless R.67-610 applies.~~

C. A party may move for adjournment at a hearing under the following circumstances:

(1) To ~~procure~~ obtain additional evidence when the evidence is in existence, identified, and necessary for the decision, but unavailable at the time of the hearing.

(2) When a witness fails to appear.

(a) If the witness has been properly subpoenaed, the moving party shall produce a copy of the Form 27 and proof of service. The Commission may allow the testimony to be made part of the record by *de bene esse* deposition or by testimony at a reconvened hearing. Nothing in this section shall prevent the moving party from withdrawing the subpoena or agreeing to an alternate means of obtaining the necessary evidence.

(b) If the witness has not been properly subpoenaed, the moving party shall provide a reasonable basis for failure to subpoena the witness. The testimony may be allowed at the Commissioner's discretion.

67-615. Transcripts of Hearings.

A. A person may by written request in writing to the Commissioner's office court reporter, obtain all or a portion of a transcript of a hearing.

B. A request for a portion of a transcript shall be limited to the entire testimony of a particular witness, the opening or closing statement or the position of a party or parties.

C. ~~The hearing reporter shall transcribe and deliver the request as soon as reasonably possible.~~

~~D. The cost will be at the prevailing rate established by the Commission and the of a transcript is the responsibility of the party ordering the transcript. Bills shall be paid within thirty days of the receipt of the transcript, and failure to do so shall result in the party's inability to obtain additional transcripts or copies until the account is current.~~

67-712. Requesting Higher Court Review.

~~A. Notice shall be given to~~ The appellant shall notify the Judicial Department of any and all subsequent appeals ~~and orders. See Rule 203(b)(6), SCACR.~~

B. ~~The appellant prevailing party shall provide the Judicial Department with a copy of any orders issued by the courts on appeal. The prevailing party shall also notify the Commission in writing when a final order issued by the courts on appeal remits jurisdiction to the Commission.~~

67-802. Settlement, Form 16, Form 16A.

A. If the parties agree to the terms of a Form 16 or Form 16A, the employer's representative completes shall complete a Form 16 or Form 16A by recording the claimant's compensation rate; the percent of disability agreed upon; disfigurement, if any; and the number of weeks of compensation the claimant will receive. The form may be approved as follows:

(1) If the claimant is not represented by an attorney, the Form 16 or Form 16A must be approved at an informal conference.

(a) The employer's representative must request an informal conference by filing writing the Judicial Department requesting that an informal conference be scheduled, and filing an updated Form 18 or the EDI equivalent Sub Annual (SA) Periodic Report showing the 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 Commission shall accept medical records containing the substantial equivalent of the information contained in the Form 14B only when the party certifies and documents that it has made a good faith effort to obtain a completed Form 14B, and the hospital or physician has unreasonably refused to complete a Form 14B. The claimant may request an informal conference by writing to the Judicial Department.

(b) If the parties at the informal conference reach an agreement ~~at the informal conference~~ which the Commissioner approves, or the claims mediator recommends, the parties shall sign the

agreement. (A Commissioner must approve a claims mediator's recommendation before the settlement is recorded as binding.)

(c) If the parties do not reach an agreement ~~with~~ of which the Commissioner approves, the Commission ~~will~~ shall set the matter for a hearing according pursuant to R.67-8041.

(2) If the claimant is represented by an attorney, the claimant, his or her attorney, and the employer's representative shall sign the Form 16 or Form 16A. The Form 16 or Form 16A ~~may~~ shall then be filed with the Commission for approval without an appearance before a Commissioner, as follows:

(a) The employer's representative ~~files~~ shall file an original and one copy of the Form 16 or Form 16A with the Commission's Claims Department. The employer's representative shall file the Form 14B, if applicable, with the Form 16A for claims arising after July 1, 2007.

(b) A Commissioner ~~reviews~~ shall review the Form 16 or Form 16A and may approve the Form.

(c) If the Commissioner approves and signs the Form 16 or 16A ~~approving it~~, the Claims Department ~~records~~ shall record the settlement and ~~returns~~ return an approved copy of the Form to the employer's representative.

(d) The employer's representative must provide the claimant a copy of the approved Form 16 or Form 16A.

(3) If the claimant is represented by an attorney, and the employer is represented by an attorney, a Form 16 or a Form 16A shall be filed with the Commission.

(a) The attorney for the employer's representative ~~files~~ shall file an original and one copy of the Form 16 with the Commission's Claims Department. A Commissioner ~~reviews~~ shall review the Form and may approve the Form.

(b) The attorney for the employer's representative ~~files~~ shall file an original and one copy of the Form 16A with the Commission's Claims Department.

(c) The Commission's Claims Department ~~reviews~~ shall review and ~~records~~ record the settlement, and ~~returns~~ return an official copy of the Form 16 or 16A to the attorney for the employer's representative.

B. The Commissioner may schedule an informal conference to discuss the terms of the settlement when necessary.

67-804. Informal Conference.

~~A. A claims mediator may appear on behalf of a Commissioner at an informal conference and review a proposed Form 16 or Form 16A settlement or review a R.67-505 or R. 67-506 request to certify a Form 17. A claims mediator may not appear on behalf of a Commissioner at an informal conference requested for review of a proposed Agreement and Final Release.~~

Appearances at Informal Conferences.

(1) A claims mediator may appear on behalf of a Commissioner at an informal conference when the purpose of the informal conference is to:

(a) review a proposed Form 16 or Form 16A settlement when the total amount of medical benefits paid is below the threshold amount established by the Commission; or

(b) certify a Form 17.

(2) A Commissioner shall preside over an informal conference when the purpose of the informal conference is to:

(a) approve a settlement in the form of a full and final Agreement and Release made pursuant to Section 42-9-390; or

(b) approve a proposed Form 16 or Form 16A settlement when the total amount of medical benefits paid meets or exceeds the threshold amount as established by the Commission.

The Commissioner may, in the Commissioner's discretion, preside over an informal conference that does not fall under items (a) or (b).

(3) An insurance adjuster licensed by the South Carolina Department of Insurance in accordance with Chapter 47 of Title 38, South Carolina Code of Laws, may appear on behalf of an employer or insurance company at an informal conference when the purpose of the informal conference is to:

(a) review a proposed Form 16 or Form 16A settlement when the total amount of medical benefits paid is below the threshold amount as established by the Commission; or

(b) certify a form 17.

(4) An attorney licensed in this State or admitted in accordance with R.67-1201C shall appear on behalf of an employer or insurance company at an informal conference when the purpose of the informal conference is to:

(a) approve a settlement in the form of a full and final Agreement and Release made pursuant to Section 42-9-390; or

(b) approve a proposed Form 16 or Form 16A settlement when the total amount of medical benefits paid meets or exceeds the threshold amount as established by the Commission;

The Commissioner may deem it prudent for an attorney to appear at an informal conference that does not fall under subsections (a) or (b) according to the Commissioner's discretion.

B. An informal conference is defined in R.67-202(8).

C. ~~Request~~ Requesting an informal conference ~~Informal Conference as follows:~~

(1) File an updated Form 18 indicating the status of payment of temporary compensation, if any, and medical expenses and complete Section 6 by checking "yes." A party requesting an informal conference shall (a) write the Commission's Judicial Department requesting that an informal conference be set, and (b) upload an updated Form 18 or the EDI equivalent Sub Annual (SA) Periodic Report showing the status of payment of temporary compensation, if any, and medical expenses.

(2) ~~When~~ Upon receipt of a request for an informal conference is received, the Commission's file is reviewed the Commission shall review the Commission's file for required reports. The employer's representative must assure ensure that the following reports are in the Commission's file before the informal conference is held, or ~~the employer's representative~~ may be subject to a fine.

(a) Form 14B, if applicable; and

(b) Form 15, if applicable; and

(c) Form 17, if applicable; and

(d) Form 20, if applicable; and

(e) All medical reports required by R.67-1301; and

(f) An authorized health care provider's report stating the claimant has reached maximum medical improvement and an impairment rating, if any; and

(g) An amputation chart, if applicable.

D. The claimant may request an informal conference by writing the Commission's Judicial Department and stating whether the parties propose to settle the claim on a Form 16, a Form 16A, or by Agreement and Final Release.

E. An informal conference may be held with less than thirty ~~days~~ days' notice to the parties. The conference shall be held at a hearing site as designated by the jurisdictional commissioner. If the parties request in writing to convene the conference ~~in~~ at a different hearing site, all parties agree, and the ~~letter request~~ request is received before the ~~conference~~ hearing notice for the conference is issued, the request may be approved administratively.

F. Only ~~the a~~ a Commissioner assigned to the claim is authorized to approve a Form 16, a Form 16A, or an Agreement and Final Release.

G. When the claimant fails to appear at an informal conference, the Commission ~~reschedules~~ shall reschedule the conference.

(1) If the claimant fails to appear twice, the claim ~~is taken~~ shall be removed from the informal conference roster and administratively dismissed.

(2) The claimant may request the Commission to schedule another informal conference and the Commissioner assigned to the claim may, if a good cause is shown, allow the claimant to proceed with his or her claim.

H. If the employer's representative or an attorney, if any, fails to appear at the informal conference, the Commission ~~reschedules~~ shall reschedule the conference. The Commissioner assigned to the claim may ~~impose on~~ assess against the employer's representative or an attorney, if any, the actual costs of the conference as established by the Commission.

I. If the parties fail to reach an agreement at the informal conference, or the proposed Agreement and Final Release is not approved, the Commission ~~will~~ shall set the claim on the contested case hearing docket. A Form 50 or Form 52 is not required, but if filed, the opposing party must respond ~~according~~ pursuant to R.67-603.

J. Either party may request postponement of the informal conference by writing either the Commissioner whose name appears on the informal conference notice or the Judicial Department. The Commissioner may reschedule the conference during the term the Commissioner is in the district. If the Commissioner cannot reschedule the conference during his or her term in the district, the Commission ~~will~~ must reschedule the conference, unless otherwise ~~provided~~ agreed to by the parties or ordered by the Commission.

67-1515. Confidentiality of Information.

A. ~~Records~~ Commission records and information ~~concerning~~ relating to the solvency and financial condition of an employer ~~required by the Commission~~ under the authority granted by this Chapter and the Act shall not be subject to inspection; nor shall any information ~~in any way~~ be directly or indirectly divulged by the Commission ~~or any of its members unless~~ except by order of a Court of competent jurisdiction.

B. The Commission shall not release to the public any information concerning a self-insured or a self-insurance fund other than (1) confirmation that an employer is individually self-insured or is a member of a specific self-insurance fund, (2) its the self-insured's or self-insurance fund's address, (3) the effective date of the such insurance program, and (4) the name of the claims administrator.

67-1602. Payment of Compensation.

A. ~~The~~ Unless otherwise ordered by the Commission, the employer's representative shall pay all compensation directly to (1) the claimant or (2) the guardian, if the claimant is a minor or incapacitated person, or (3) another person approved by a court to accept payment on behalf of the claimant, unless otherwise ordered by the Commission.

B. The employer's representative ~~may~~ shall make a check payable to the claimant and the claimant's attorney, as allowed ~~according~~ pursuant to an approved Form 61, Attorney Fee Petition, or by order of the Commission.

C. The employer, employer's representative, or other payer shall make each payment in the form of a check, unless the parties mutually agree to an alternate payment method as provided for in this section. ~~Payment to a person other than as directed above shall not acquit, protect, or discharge the employer or its representative for the payment due.~~ An employer, employer's representative, or other payer may use an electronic payment system, including, but not limited to, an electronic funds transfer, a direct deposit, debit card, or similar payment system, as an alternative method of payment if:

(1) the claimant can immediately obtain the full amount of the periodic payment;

(2) the method of payment is easily and readily accessible to the claimant; and
(3) the use of an electronic payment system is optional and at the election of the parties as documented in the records of the payer; and

(4) once the parties have agreed to use an alternate payment system in accordance with this section, either party may opt to change the method of payment to another method consistent with this section by providing 30 days' written notice to the other party.

D. When payment is made to a debit card account:

(1) the payer shall not charge the claimant any fee related to the issuance of the debit card;

(2) the claimant must be provided a reasonable method to obtain payment in full without incurring any usage fee; and

(3) any other fees associated with the use of the debit card shall be disclosed to the claimant in writing by the payer.

E. Other than when making payment by check, an employer, employer's representative, or other payer shall not make a payment as described in subsection C. without the full consent of the claimant, obtained without intimidation, coercion, or fear of discharge or reprisal. Default payment shall be by check.

F. Payment made other than as directed in this section shall not acquit, protect, or discharge the employer, employer's representative, or other payer for the payment due.

G. The claimant may request a hearing to assess a penalty and, or, interest for late payment by filing with the Commission's Judicial Department a motion to increase compensation payments according to R.67-215.

67-1802. Mediation Required with Certain Claims.

~~A. It is ordered by the The Commission orders that the following claims arising under Section 42-9-10, or claiming permanent and total disability pursuant to Section 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:~~

(1) Claims for permanent and total disability arising under either Section 42-9-10 or Section 42-9-30(21), but only after the employee has reached maximum medical improvement per the opinion of an authorized health care provider;

(2) Claims arising under Chapter 11 or Chapter 13 of Title 42, South Carolina Code of Laws;

(3) Third-party lien reduction claims;

(4) Contested death claims;

(5) Claims for stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury, and resulting in mental illness or injury; and

(6) Claims involving concurrent jurisdiction under the South Carolina Workers' Compensation Act and the Federal Longshore and Harbor Workers' Compensation Act.

B. In contested death claims, a Commissioner must still make a finding that a good faith dependency investigation has been conducted and completed.

~~(2) C.~~ Except for contested death claims, all claims listed in this section would apply the requirement for mandatory mediation applies only to claims where compensability of the accident is admitted by the employer/carrier.

~~(3) 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.~~

(4) D. Unless an unrepresented claimant requests that the claimant's case be mediated, the Commission shall ~~enter an order dispensing with~~ not require mediation.

67-1804. Selection of Mediator and Required Schedule.

A. The parties may consent to use any mediator who is duly qualified. The mediator must be certified as a mediator per the certification process established by the South Carolina Bar Association.

B. The parties must select a mediator within ten days of the filing of the ~~Form 51 or the response to the Form 21~~ earliest pleading raising grounds for mediation, and must promptly notify the Commission of the mediator and proposed mediation date.

C. The mediation must be completed within sixty days of the filing of the ~~Form 51 or the response to the Form 21~~ earliest pleading raising grounds for mediation, unless otherwise agreed to by the parties or ordered by the Commission. If the mediation is not completed within the sixty-day timeframe, ~~then the case shall~~ may be set ~~by the Judicial Department~~ in the normal course of the docket scheduling.

D. If the parties cannot agree on a mediator, the Commission shall appoint a duly qualified mediator ~~for them~~.

67-1809. Forms Required Upon Completion.

A Form 70 shall be filed by the ~~Mediator~~ 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. The Commission shall not process a Form 19 or further request for hearing until a Form 70 has been filed with the Commission.

Findings

The Workers' Compensation Commission is the regulatory agency of the State of South Carolina responsible for overseeing and administering the South Carolina Workers' Compensation Act. SC Code Ann. § 42-1-10 et seq. (1976). The Commission has statutory and regulatory authority to promulgate rules and regulations as set forth in § 42-3-30. The proposed amendments to the regulations are administrative or procedural in nature.

Following receipt of public comments, the Commission reached the consensus that the proposed amendments to the following regulations are reasonable and necessary: Reg. 67-201; Reg. 67-205; Reg. 67-211; Reg. 67-213; Reg. 67-214; Reg. 67-215; Reg. 67-413; Reg. 67-611; Reg. 67-613; Reg. 67-615; Reg. 67-712; Reg. 67-802; Reg. 67-804; Reg. 67-1515; Reg. 67-1602; Reg. 67-1804; and Reg. 67-1809.

Following receipt of public comments, the Commission reached the consensus that the need for or reasonableness of the following proposed amendments has not been established and they should be modified in accordance with § 1-23-111(C)(a): the amendment to Reg. 67-207(A) striking through the words "Form 15" should be removed, restoring the language stricken through; the amendment to Reg. 67-207(A)(1) striking through " , or sign and date under Section III of the Form 15 "Notice to Injured Worker or Legal Representative When Temporary Compensation Has Been Stopped" should be removed, restoring the language stricken through; the amendment to Reg. 67-207(A)(3) striking the words "Form 15," should be removed, restoring the language stricken through; the amendment to Reg. 67-504(C) striking the words "Section III of the Form 15" should be removed, restoring the

language stricken through; the amendment to Reg. 67-504(C) adding the phrase "a Form 50 Request for Hearing" should be stricken; the amendment to Reg. 67-1802(A) should be modified to read "Claims for permanent and total disability arising under either Section 42-9-10 or Section 42-9-30(21), but only after the employee has reached maximum medical improvement per a physician or psychologist."

The Commission reached the consensus that the remaining proposed amendments to Reg. 67-207, Reg. 67-504, and Reg. 67-1802 are reasonable and necessary.

The Commission reached the consensus that the proposed amendments to Reg. 67-207 should read

67-207. Requesting a Hearing, Claimant.

A. ~~To request a hearing, file~~ A hearing shall be requested by filing a Form 15, Form 50, or Form 52 with the Commission's Judicial Department as provided below:

(1) ~~The party shall~~ Mark mark the box at the signature line on the Form 50 or Form 52 which states, "I am requesting a hearing," or sign and date under Section III of the Form 15 "Notice to Injured Worker or Legal Representative When Temporary Compensation Has Been Stopped."

(2) ~~Address and deliver the~~ The form shall be addressed and delivered to the Judicial Department pursuant to R.67-205.

(3) The Commission ~~erves~~ shall serve the Form 15, Form 50, or Form 52 on the employer according pursuant to R.67-210 and R.67-211.

(4) When under the laws of this State the employer and its insurance carrier, if any, are required by law to be represented by an attorney in a contested case hearing, an attorney shall be designated according to R.67-603.

(5) The WCC file number or Coverage Coding Form must be included.

B. ~~Filing~~ When a party files a Form 50 or Form 52 with the Commission requesting a hearing, the Form 50 also ~~files~~ serves to file the claim if a claim has not been filed before.

The Commission reached the consensus that the proposed amendments to Reg. 67-504 should read

67-504. Terminating Payment of Temporary Total or Temporary Partial Compensation During the First One Hundred Fifty Days After Employer's Notice of the Accident.

A. The employer's representative may terminate or suspend temporary compensation during the first one hundred fifty days after the employer has received notice of the injury according pursuant to Section 42-9-260. When compensation is terminated or suspended, the employer's representative shall complete Section I and Section II of the Form 15, Temporary Compensation Report. The employer's representative shall file the Form 15 immediately with the Claims Department and shall ~~serve two copies of~~ the Form 15 immediately on the claimant according pursuant to R.67-211 with documentation attached as to the reason for termination or suspension.

B. To terminate or suspend compensation pursuant to Section 42-9-260(B)(2), the employer's representative must obtain a signed Form 17.

C. The claimant may request a hearing to dispute the termination or suspension of temporary compensation by completing Section III of the Form 15 and filing it according pursuant to R.67-207.

The Commission reached the consensus that the proposed amendments to Reg. 67-1802 should read

67-1802. Mediation Required with Certain Claims.

A. ~~It is ordered by the~~ The Commission orders that the following claims arising under Section 42-9-10, or claiming permanent and total disability pursuant to Section 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.:

(1) Claims for permanent and total disability arising under either Section 42-9-10 or Section 42-9-30(21), but only after the employee has reached maximum medical improvement per the opinion of a physician or psychologist;

(2) Claims arising under Chapter 11 or Chapter 13 of Title 42, South Carolina Code of Laws;

(3) Third-party lien reduction claims;

(4) Contested death claims;

(5) Claims for stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury, and resulting in mental illness or injury; and

(6) Claims involving concurrent jurisdiction under the South Carolina Workers' Compensation Act and the Federal Longshore and Harbor Workers' Compensation Act.

B. In contested death claims, a Commissioner must ~~still~~ make a finding that a good faith dependency investigation has been conducted and completed.

(2) ~~C.~~ Except for contested death claims, all claims listed in this section would apply the requirement for mandatory mediation applies only to claims where compensability of the accident is admitted by the employer/carrier.

(3) ~~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.~~

(4) ~~D.~~ Unless an unrepresented claimant requests that the claimant's case be mediated, the Commission shall enter an order dispensing with not require mediation.

Legal Authority

The Commission has statutory and regulatory authority to promulgate rules and regulations as set forth in § 42-3-30. The regulation will cover claims pursuant to Title 42 of the SC Code of Laws.

Plan for Implementation

After approval by the General Assembly and publication in the *State Register*, the proposed regulations will take effect on July 1, 2017. The proposed amendments will be implemented by providing the regulated community a copy of the regulations on the Commission's website, www.wcc.sc.gov.

Fiscal Impact Statement

The fiscal impact of the proposed changes to this regulation is \$0. The proposed changes will allow the Commission to implement the statutory requirements of Title 42 in a more efficient and effective manner.

Statement of Need and Reasonableness

The proposed amendments further clarify that Article 2 of the Regulations applies to all levels of proceedings before the Commission; clarify the Commission’s judicial ruling that the effective date of service when made electronically is the date it is sent and received as indicated by the parties’ electronic mail service provider; streamline the procedure for requesting a hearing; reduce the use of subpoenas for improper purposes; establish regulatory procedures governing the use of Motions before the Full Commission; clarify a deadline for making amendments to a Pre-Hearing Brief; clarify the process for appealing a Decision of the Commission to the courts; allow the option for carriers to make claimants’ indemnity payments by electronic transfer or debit card; provide sanctions for the failure of the parties to file a Form 70 at the completion of mediation.

Recommendation

Pursuant to Section 1-23-111 of the SC Code of Laws, I find the proposed changes to regulations with the modifications outlined above and approved by the Commission are reasonable and direct staff to initiate the process of legislative review by filing the proposed changes with the modifications outlined above with the Editor of the *State Register* to include a letter to the President of the Senate and a letter to the Speaker of Representatives requesting legislative review.



T. Scott Beck, Commissioner

11/5/17

Date