

The State of South Carolina



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April 6, 1989

Mr. Michael Grant LeFever  
Executive Director  
Workers' Compensation Commission  
P. O. Box 1715  
Columbia, South Carolina 29202-1715

Dear Mr. LeFever:

Thank you for your letter addressed to the Attorney General. You have asked for guidance relative to the approval of settlement agreements entered between an employee and the employer or carrier. Specifically, your question addresses Commission Rule R 67-24, which provides, inter alia, that compensation settlements will be approved by the Workers' Compensation Commission without judicial proceedings. You reference in your letter two prior opinions that relate to the Commission's approval of settlements and question the significance of R 67-24 with regard to these prior opinions.

On August 2, 1985, this Office advised the Workers' Compensation Commission that the approval of settlement agreements,

is most important and involves a determination by the reviewing officer that the agreement is in the interest of the claimant, and moreover, assures that the agreement is elevated to the status of a judicial decree for the purposes of judicial enforcement. Mackey v. Kerr-McGee Chemical Co., [280] S.C. [265], 312 S.E.2d 565 (S. C. App. 1984). Because this decision to approve a settlement involves an exercise of discretion, the approval is ordinarily vested with an official who maintains quasi judicial power under the compensation act. Carpenter v. Indem. Co., 65 R.I. 194, 14 A.2d 235 (1940).

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We further advised in the August 2, 1985, opinion that the approval of settlements is a duty that must be performed by the Commissioner[s] pursuant to the express language of Section 42-9-390 of the Code. See also, Sections 42-3-20 and 42-17-10.

This Office advised on December 1, 1986, that a delegation by the Commission "to a Deputy Commissioner of the responsibility to hear evidence and take testimony in the conduct of a hearing for approval of a settlement is consistent with the law, provided that final approval authority of the settlement remains with the Commissioners." Op. Atty. Gen. (12/1/86).

We believe that the August 2, 1985, opinion made clear that the approval of workers' compensation settlements is a quasi-judicial function involving an exercise of discretion by an official who maintains quasi-judicial power under the Compensation Act and is non-delegable in the absence of express statutory authority. In the event that any doubt remains, I reference a recent State court decision,

. . . the role of decision maker cannot be delegated. Kerr-McGee Nuclear Corporation v. New Mexico Environmental Improvement Board, 97 N.M. 88, 97, 637 P.2d 38, 47 (1981) (administrative bodies cannot delegate power, authority and functions which under the law may be exercised only by them, which are quasi-judicial in character or which require the exercise of judgment).

Bradley v. State Human Affairs Comm., 296 S.C. 376, 360 S.E.2d 537, 539 (S. C. App. 1987).

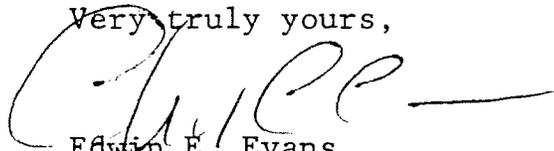
In Mackey v. Kerr-McGee, supra, the State Court of Appeals emphasized both the importance of the approval decision and its quasi-judicial nature. Moreover, the Court specifically cited Commission Rule R 67-24 in its opinion; thus, it cannot be said that the Court was unaware of the Rule and its specific provision that ". . . the Agreement will be approved by the [Workers' Compensation] Commission." Clearly, the Rule cannot be read as permitting the Commission to delegate its approval authority, nor can the Rule be read as altering the quasi-judicial nature of the approval function. Any such reading of the Rule would conflict with the statutory provisions which provide that approval is a discretionary function to be exercised by the Commissioners. Nonetheless, there is no statutory requirement that the approval of settlements be preceded by the formality of contested case hearings or proceedings and, thus, to the extent

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that R 67-24 provides only that the judicial or contested case procedures will not be required for approval of settlements, I perceive no conflict. To the contrary, the contested hearing and appeal procedures of the Commission are generally not designed to resolve uncontested matters and may even be inconsistent with Section 42-9-390. See R 67-28, R 67-31 and R 67-32.

In conclusion, I emphasize that the approval of workers' compensation settlements is a quasi-judicial function that must be performed by the Commissioners. The "approval" contemplates review by an objective official vested with the judicial power to dispose of cases arising under the Workers' Compensation Act and involves a determination by the Commissioners that the settlement agreement equitably protects the injured employee. Nonetheless, there is no statutory requirement that the Commission follow its formal judicial or contested case procedures prior to approval of settlements, and it appears that these formal procedures may even be inapplicable to the approval function. On the other hand, the approval function is quasi-judicial and requires the individual exercise of discretion by the Commissioners.

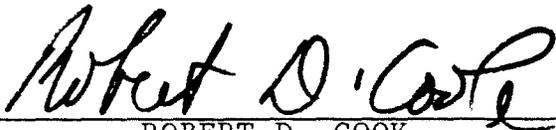
Very truly yours,



Edwin E. Evans  
Chief Deputy Attorney General

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REVIEWED AND APPROVED:



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