

Workers' Comp LAW BLOG

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Senate Judiciary Committee Attempts to Give Mediation Regulations Some Teeth

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Last week, the Senate Judiciary Committee asked the Workers' Compensation Commission to withdraw and resubmit Regulation 67-1801, et. seq., with a change to Section 67-1802A. This is the paragraph that requires mediation in admitted perm total cases, occupational disease cases, third party lien claims, contested death claims, mental/mental injury claims and concurrent jurisdiction cases involving workers' compensation and the Federal Longshore and Harbor Workers' Compensation Act.

Rather than beginning that paragraph with the phrase "Claims arising under" those situations, the Judiciary Committee asked the Commission to insert the phrase "It is ordered by the Commission that claims arising under..." So why the change?

The new regulation contains a penalties provision in 67-1808. Basically, if the Commission finds a party is not mediating in good faith, a fine up to the cost of the mediation can be imposed. Stated another way, if one party is found to be wasting the other's time by acting in bad faith, the offending party can be made to pay the total cost of the mediation.

Apparently, some of the Judiciary Committee members were concerned the Commission's authority to impose this sanction was not sufficient, so 67-1802A was enhanced to give the regulation the force of a Commission order. The implication is if a party acts in bad faith, they are in violation of a Commission order and can be held in contempt. The problem is the Act does not contain a general contempt statute allowing the Commission to fashion its own sanctions. True, there are plenty of statutes that allow the Commission to issue fines for various acts or omissions (See, e.g. §42-3-105, §42-3-175, §42-5-40, §42-5-240, etc.) and there is a statute that allows the Commission to hold someone in contempt for failing to appear at a hearing or deposition or failing to respond to a subpoena (§42-3-150). Each of these statutes provides limits and constraints on the Commission's remedies. Nowhere is there a statute that allows the Commission to exercise the same contempt powers as those of the circuit court, for example.

So, what did the minor change in 67-1802A accomplish? I can't say. But I'm comfortable the change does little or no harm. If the Senate Judiciary Committee wants it, the Commission should not object. And last Monday, the Commission, in a special meeting, accepted the change. The mediation regulation should proceed to becoming law unimpeded.

About Stan Lacy

Stan Lacy co-founded Collins & Lacy in 1984, and he practices in the area of workers' compensation. Stan graduated from the University of Virginia with a degree in Aerospace Engineering in 1967. While at the University of Virginia, he served as President of the Engineering School, President of Sigma Pi Fraternity and was a member of the Trigon Society. He then served four years in the United States Air Force, becoming a captain, where he was awarded the Air Force Commendation Medal for the work he did on the Vietnamization of the war in Southeast Asia. He also received the Vietnam Service Medal and the National Defense Ribbon. He earned his law degree from the University of South Carolina School of Law in 1974 and was admitted to practice in South Carolina during the same year. He began teaching workers' compensation as an adjunct instructor at the University of South Carolina School of Law in 1981 and has continued to teach ever since. He also frequently conducts workshops on compensation laws.

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