

A G E N D A
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

1333 Main Street, 5th Floor
Columbia, South Carolina 29201

October 29, 2013 – 10:30 a.m.

Commission Hearing Room A

This meeting agenda was posted prior to the meeting, and proper advance notice was made to all concerned parties in compliance with requirements in the Freedom of Information Act.

Public Hearing

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| 1. CALL TO ORDER | CHAIRMAN BECK |
| 2. APPROVAL OF AGENDA | CHAIRMAN BECK |
| 3. PROPOSED CHANGE TO R 67-1605 LUMP SUM PAYMENT | GARY CANNON |
| 4. PUBLIC COMMENT PERIOD | CHAIRMAN BECK |
| 5. ADJOURNMENT | CHAIRMAN BECK |

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

TO: Workers' Compensation Commissioners

FROM: Gary M. Cannon

DATE: October 25, 2013

RE: Public Hearing – Proposed Amendments to R 67-1605 Lump Sum Payment

A public hearing is scheduled on Tuesday, October 29, 2013 to receive comment on the proposed amendments to R 67-1605 Lump Sum Payment. The proposed amendments will ensure the fairness of the methodology used to calculate the net present value of lump sum payments.

Background

At the regular business meeting on April 15, 2013, the Commission approved the recommendation from the Commuted Value Discount Advisory Committee to amend the language in R 67-1605 Lump Sum Payment. The Notice of Drafting was published in the June 28 issue of the *State Register*. Deadline to receive comments on the Notice of Drafting was 5:00 p.m. on July 25, 2013. No comments were received on the Notice of Drafting.

At the regular business meeting on August 12, 2013, the Commission approved the language of the proposed regulation (attached). The proposed regulation was published in the September 27, 2013 issue of the *State Register*. Deadline to receive comments on the proposed regulation is 5:00 p.m. on Monday, October 28, 2013.

As of today, October 25, 2013, the Commission received one comment via email from Ms. Cindy Smith.

Document No. 4399
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
CHAPTER 67

Statutory Authority: 1976 Code Sections 42-3-30 and 42-9-301

67-1605. Lump Sum Payment.

Preamble:

The South Carolina Workers' Compensation Commission proposes to amend Regulation, R.67-1605, Lump Sum Payment. The Notice of Drafting regarding this regulation was published on June 28, 2013 in the State Register.

Section by Section Discussion

The Commission is proposing to amend Regulation 67-1605 to include the following provisions:

Installments yet to accrue of one- hundred one through five- hundred weeks shall be discounted at the yield-to-maturity rate of the Five Year U.S. Treasury Note as published by the United States Treasury Department on the first business day after January 1st each year, but in no case shall the discount rate exceed six percent or be less than two percent;

The Commission shall publish a present value table showing the conversion factors for weeks one-hundred and one through five-hundred on the first business day following January 1st of each year;

The present value table for weeks one-hundred and one through five-hundred published on the first business day following January 1st shall apply to all awards made during the year until a new present value table is published the following year;

The present value of the commutable weeks shall be determined based on the present value tables in effect on the date of the award or settlement.

In the event the Commission makes an award of a partial lump sum in excess of five-hundred weeks in accordance with § 42-9-10(C) and § 42-9-10(D), the discount rate shall be determined on a case by case basis.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comments to the South Carolina Workers' Compensation Commission, attention Gary M. Cannon, Executive Director, Post Office Box 1715, Columbia, South Carolina 29202-1715. To be considered, comments must be received no later than 5:00 p.m. on Monday, October 28, 2013.

The South Carolina Workers' Compensation Commission has scheduled a public hearing for October 29, 2013 at 10:30 a.m. in Hearing Room A at the SC Workers' Compensation Commission, 1333 Main Street, Columbia, SC 29202.

Preliminary Fiscal Impact Statement:

The fiscal impact of the proposed changes to this regulation is \$0.

Statement of Need and Reasonableness:

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 shall promulgate all regulations relating to the

administration of the workers' compensation laws. The Commission has the authority to establish the discount rates at not to exceed six percent nor be less than two percent. § 42-3-30; § 42-9-301; R 67-1605.

DESCRIPTION OF REGULATION: R 67-1605. Lump Sum Payment

Purpose: The purpose of the regulation is to establish procedures for an employer or employer's representative for making a lump sum payment.

Legal Authority: Pursuant to Section § 42-9-301 the Commission is authorized to establish the discount rates at not to exceed six percent nor be less than two percent.

Plan for Implementation: The proposed regulation will take effect upon approval by the General Assembly and publication in the *State Register*.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The Commission determined a need for considering the methodology used to calculate net present value of lump sum payments in June 2012. An ad hoc advisory committee of stakeholders was formed to review the current and alternative methodologies for calculating the net present value of lump sum payments to ensure fairness to the claimants and the employers.

DETERMINATION OF COSTS AND BENEFITS:

There are no additional costs to the agency related to the proposed regulation. The benefit of the proposed changes is to provide a more equitable calculation by using current interest rates for making lump sum payments.

UNCERTAINTIES OF ESTIMATES:

None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

None

Statement of Rationale:

The Commission is proposing to amend Regulation 67-1605 to ensure the fairness of the methodology used to calculate the net present value of lump sum payments.

Text:

67-1605. Lump Sum Payment.

A. The employer's representative shall pay, in lump sum, a settlement or award which is less than one hundred weeks. When a settlement or award is more than one hundred weeks, the Hearing Commissioner may order a lump sum payment or the claimant may request a lump sum payment by filing a Form 24, Application for Lump Sum Payment.

B. If the claimant is not represented by an attorney, the claimant may request lump sum payment by filing a Form 24 with the Commission's Claims Department. The department will contact the employer's representative to inquire if it consents to payment in lump sum.

C. An attorney for the claimant must request the employer's consent to payment in lump sum payment prior to filing a Form 24.

(1) If the parties agree to payment in lump sum, the claimant's attorney may file with the Claims Department a Form 24 and attach to the Form 24 a signed agreement for payment in lump sum.

(2) If the employer's representative does not consent to payment in lump sum, the claimant's attorney may file a Form 24 with the Claims Department and attach a letter stating that the insurance carrier does not consent to the lump sum payment.

(3) The Commission will automatically set a hearing. The parties will be notified according to R.67-607.

D. If the employer's representative consents to payment by lump sum, the Claims Department forwards the Form 24 to the original Hearing Commissioner who reviews the Form 24 and may approve the Form 24 without the appearance of the parties.

(1) If the Commissioner approves the Form 24, he or she signs the Form 24 and the Claims Department commutes the award or settlement to present day value as provided in E below.

(2) The employer's representative is notified of the amount of the lump sum payment.

(3) If the Commissioner does not approve the Form 24, a hearing will be set automatically and the parties notified according to R.67-607.

E. Unless a Commissioner orders otherwise, or unless the settlement or award is less than ten weeks, the insurance carrier receives a discount for payment in lump sum.

(1) To determine the discount, the Commission subtracts the number of weeks already paid from the total number of weeks as awarded.

(2) Weeks that have accrued but are not paid at the time of the commutation are not included in the calculation.

(3) Three weeks of compensation are accrued into the future to allow for processing the Form 24 and issuing the check to the claimant.

(4) The number of accrued weeks are deducted from the total number of weeks due the claimant, resulting in the number of weeks commuted.

(5) The present worth of the remaining weeks is determined according to the discount tables designated by the Commission.

~~(a) A table based on a discount of~~ Each installment yet to accrue of the first one-hundred weeks of the award shall be discounted at a rate of two percent, per annum on each installment yet to mature. The Commission shall publish a present value table showing the conversion factors for zero through one-hundred weeks, is used for less than one hundred weeks.

~~(b) A table based on a discount of five percent per annum on each installment yet to mature is used for more than one hundred weeks.~~ Each installment yet to accrue of weeks one-hundred and one through five-hundred shall be discounted at the yield-to-maturity rate of the Five Year U.S. Treasury Note as published on the first business day after January 1st each year, but in no case shall the discount rate exceed six percent or be less than two percent. The Commission shall publish a present value table showing the conversion factors for weeks one-hundred and one through five-hundred on the first business day following January 1st of each year. The present value table for weeks one-hundred and one through five-hundred published on the first business day following January 1st shall apply to all awards made during the year and until a new present value table is published the following year. The present value of the commutable weeks shall be determined based on the present value tables in effect on the date of the award or settlement.

(c) In the event the Commission makes an award of a partial lump sum in excess of five-hundred weeks in accordance with S.C. Code § 42-9-10(C) and § 42-9-10(D), the discount rate shall be determined on a case by case basis.

(6) Multiplying the present worth of the weeks by the claimant's compensation rate results in the commuted value of the remaining weeks.

(7) Adding the value of the accrued weeks to the commuted value of the remaining weeks results in the total amount due the claimant.

F. The dollar value of a lump sum payment may be requested by writing the Claims Department.

Ballentine, Kim

From: Cannon, Gary
Sent: Wednesday, August 14, 2013 9:39 AM
To: Cin Smith
Cc: Ballentine, Kim
Subject: RE: commuted value

Ms. Smith

Thank you for your comments on the proposed changes to the regulations on Lump Sum Payments.

I will include them in the record for the Commissioners review.

Gary M. Cannon
Executive Director

From: Cin Smith [<mailto:cinandgene@gmail.com>]
Sent: Tuesday, August 13, 2013 2:56 PM
To: Cannon, Gary
Subject: commuted value

Dear Mr. Cannon

Please allow me to vent regarding the commuted value on WC settlements.

There should be no commuted value, or much, much less than proposed.

Personally I think it is wrong. If you take a person who was injured in 2011 whom receives the highest benefit amount of \$704.92. Since SC does not do COLA for WC; How can a commuted value be fair if you settle in the year 2013? Taking into consideration that this persons average weekly wage in 2011 would provide them with the higher benefit in 2013!

Sincerely,

Cindy Smith (spouse of one who is receiving workers comp)