

South Carolina Supreme Court: ‘Get this [2009] case decided’

by **Richard Morgan**
Burr Forman McNair

Employers often question the length of time workplace matters take once they get into the administrative and legal arena. The South Carolina Supreme Court recently reviewed a workers’ compensation case that began in 2009. Read on to see its decision.

Facts

Paula Russell injured her back in 2009 while working at a Walmart store in Conway. Because the injury was work-related and occurred in the course and scope of her employment, it was treated as a workers’ comp claim. It went before a single commissioner, who found Russell suffered a seven percent permanent partial disability and awarded her 21 weeks of temporary total disability compensation. In 2011, under the workers’ comp statute, she requested review of her award, claiming there had been a “change of condition caused by the original injury.”

A single commissioner conducted a full evidentiary hearing regarding the 2011 claim on February 11, 2013. In a detailed order dated August 5, 2013, the commissioner found Russell had proven a change of condition. The commissioner ordered Walmart to pay temporary total disability benefits beyond the original 21 weeks “through the present date and continuing.” The commissioner based the award on Russell’s testimony and the testimony and medical records of two treating physicians. In her order, the commissioner pointed to the two physicians’ testimony that described a “physical, anatomical change” and an “increase in the size of the disc protrusion,” demonstrated by an “objective”

comparison of MRI images taken before and after the award.

Walmart disagreed and appealed, and an appellate panel reversed the single commissioner. The panel dismissed Russell’s testimony as conclusory and self-serving. The panel also discounted the testimony and medical records of the two physicians, stating, “Both [physicians] ultimately testified there was no objective or significant radiographical difference to be noted in the MRI scans done before and after the original award.” In an order dated January 30, 2014, the panel found Russell failed to prove by a preponderance of the evidence she had sustained a change of condition. This time Russell appealed the workers’ comp panel’s decision to the court of appeals, which found the panel had erred in requiring a change of condition to be established by objective evidence. The court reversed the panel and remanded the case (sent it back) to the commission on May 3, 2016, but with no clear instructions on what it expected or found to be in error.

On March 20, 2017, a second (single) commissioner filed a detailed order finding Russell had met her burden of proving a condition change. On September 15, 2017, however, a new appellate panel threw out the second single commissioner’s order and remanded for what would be a third commissioner to make a third ruling. The panel instructed that at the remand hearing, the single commissioner should conduct a full evidentiary hearing and allow both parties to submit testimony, medical records, and other additional evidence for consideration on the issue of any benefits award if the condition change is found to be compensable.

Russell appealed the September 15 order to the court of appeals. In an unpublished decision, the

court found the workers' comp appellate panel's remand order wasn't immediately appealable and dismissed the appeal. She filed a petition for writ of certiorari (request for review) with the South Carolina Supreme Court. She argued the commission's repeated remands for new hearings created a perpetual cycle of orders and appeals that effectively deprived her of an adequate remedy. The supreme court granted the petition.

Court's analysis

A primary goal of the South Carolina Workers' Compensation Act (WCA) is to provide quick and efficient resolution of work-related injury claims so neither employers nor employees become bogged down in complicated and protracted litigation. The court noted it had recently emphasized that goal, stating the Act was designed to supplant tort (or wrongful personal injury) law by providing a no-fault system focused on quick recovery, relatively ascertainable awards, and limited litigation. The supreme court cited lower court decisions discussing unreasonable delays by pointing out that if an employee is entitled to benefits, she should receive them as close in point of time to the injury as reasonably possible. On the flip side, if she isn't entitled to benefits, the claims should be denied as close in point of time to the event as possible.

The Administrative Procedures Act (APA) limits the judicial branch's role in meeting the goal of quick decisions in limited litigation by restricting appeals to final decisions in most cases. The supreme court has tried to discourage the workers' comp commission from making repeated, unnecessary remands. The court has repeatedly highlighted the prejudice (or harm) workers' comp litigants can encounter by numerous remands and appeals, which can delay a final decision.

Although it's clear the supreme court's role in achieving the WCA's goal is limited, the commission's role is primary. The procedure should be as follows:

- A claim is filed with the commission and assigned to one commissioner, who must promptly conduct a hearing and determine the dispute in a summary manner;

- If the commissioner's decision is appealed, an appellate panel must promptly hear the appeal and, if proper, amend the award; and
- Then, in all but rare cases, the appellate panel should proceed promptly to make a final decision without the necessity of any remand.

The court stated that when the commission follows the above procedure, it will have fulfilled the legislatively set goal to provide a system focusing on quick recovery, relatively ascertainable awards, and limited litigation.

The commission did not meet that standard in Russell's case. Its unnecessary delays and repeated remands over the almost eight years since she filed her change-of-condition claim frustrated the WCA's goals. The supreme court found each of the remands was unnecessary—particularly the remand order on appeal—and thus contributed to the commission's failure to make a final decision in a timely manner.

First set of errors. After the first appellate panel reversed the first commissioner, the court of appeals reversed. The appellate court's focus was the error of requiring that only objective evidence may support the claim. That was an error only in the appellate panel's review of the first commissioner's decision.

In fact, as the supreme court outlined in its factual background, the first commissioner specifically relied on Russell's subjective testimony and the two physicians' subjective impressions, in addition to the objective MRI scans. Although the appeals court didn't provide specific remand instructions, the commission should have been able to determine its error was in the appellate panel's review of the commissioner—not in the commissioner's work. It was therefore completely unnecessary for the commission to require the case be reheard by a second commissioner.

Rather, given the clear description of the error committed by the appellate panel in reversing the original commissioner, the only task for the commission after the appeals court's decision was to complete a renewed review of the original commissioner's order under proper principles of law.

More unnecessary reviews. The second appellate panel's remand to a third commissioner after the second commissioner reviewed the evidence and filed a second detailed order also was unnecessary. The appeals court's 2016 opinion required only a new review, not a new hearing. Walmart counsel pointed this out and was ignored. Nevertheless, despite the facts that (1) counsel for Wal-Mart specifically asked there not be a new hearing, (2) the issue of a new hearing wasn't raised by either side after the second commissioner's order, (3) almost six years had elapsed since Russell's claim for a change of condition was filed, and (4) two detailed single-commissioner orders awarded additional benefits to her, the appellate panel remanded to a third commissioner for a third hearing, specifically requiring the very thing the party making the appeal (Walmart) had specifically asked not to have—a new hearing.

In summary, Russell filed her claim for an increase in benefits due to a change of condition in 2011. In 2013, a commissioner found she proved her condition had changed for the worse. Nearly eight years after filing the claim, she hadn't received any additional benefits, despite two commissioners finding she was entitled to them.

The supreme court found if Russell is entitled to additional benefits, she should have gotten them many years ago. If she isn't supposed to get the extra benefits, Walmart was entitled to have her claim denied many years ago. The supreme court found the commission failed to fulfill its responsibility under the WCA to promptly decide the case without protracted litigation and that the latest remand order was immediately appealable to the court. Based on its analysis, the court sent the case back for an immediate and final review of the original commissioner's decision. Lessons

The state supreme court has sent a pretty clear message to anyone involved in a workers' comp claim. Once a claim is filed, the WCA's intent should be followed. In other words, injured workers or their dependents should be provided with a prompt and speedy remedy or settlement of the claims. Injured employees should receive an efficient system of rights, remedies, and procedures with the goal of giving them prompt relief.

Among the WCA's purposes is providing prompt justice for injured workers and preventing the delays that might arise from protracted litigation. The supreme court will be watching closely for delays that prevent prompt adjudication for both the employee and the employer.

[Richard Morgan](#) is a partner with [Burr Forman McNair](#) in Columbia and an editor of [South Carolina Employment Law Letter](#). You can reach him at rmorgan@burr.com or 803-799-9800.