

WORKMEN'S COMPENSATION: An individual member of the Industrial Commission of this State may approve compromise settlements made by parties SETTLEMENTS & HEARINGS: to a claim for compensation. He may not, however, hold a hearing on a claim after an award is made thereon by a Referee and after the claim has reached the full Commission on review, under Section 287.480, RSMo 1949.



March 10, 1953

Honorable Gordon P. Weir
Chairman
Industrial Commission of Missouri
Department of Labor and Industrial
Relations
Jefferson City, Missouri

Dear Chairman Weir:

This will be the opinion you requested recently by letter for clarification of what your letter states is one point in an opinion issued by this office January 21, 1952, to Honorable Carl J. Henry then the Chairman of the Industrial Commission of Missouri. Your letter requesting an opinion reads as follows:

"On January 21, 1952 your department wrote an opinion to Mr. Carl J. Henry, Chairman of the Industrial Commission, with reference to the authority of the Industrial Commission of Missouri, or an individual member of the Commission or a referee, to approve settlements at any time, including cases on appeal.

"We would like an official opinion clarifying one point in this opinion and that is, 'after an award has been made by a referee of the Division of Workmen's Compensation and an application for review has been made to the Industrial Commission by either party, what authority does an individual member of the Commission then have to hold a hearing and make a settlement without the knowledge of the full Commission that such hearing is to be held for the purpose of making a settlement'?"

"An early reply to this will be greatly appreciated."

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We have carefully reviewed the said opinion of January 21, 1952. Your particular question is, what authority does an individual member of the Industrial Commission of this State have to hold "hearings" and make a "settlement" without the knowledge of the full Commission that such "hearing" is to be held for the purpose of making a "settlement". You enclose in quotes your question as stated in your letter which would ordinarily imply that that part of your letter in quotes is a part of the text of said opinion of January 21, 1952. This is not the case, however. Although the subject of the authority of a single member of the Commission to approve a compromise settlement of a claim for compensation at any time and the authority of a single member of the Commission to hold hearings were both discussed, and in the conclusion to said opinion such individual members were held to have such authority in each instance, the opinion did not, as a careful review thereof discloses, cover the question you submit in your letter for another opinion from this office. The said former opinion of this office does hold that, under the decision of the Kansas City Court of Appeals in *Morgan vs. Jewel Const. Co., et al.*, 91 S.W.(2d) 638, and other cases by our Courts of Appeals and Supreme Court cited in said opinion, and under present existing statutes, individual members of the Commission do now have, along with the full Commission and Referees, the concurrent authority to approve compromise settlements of compensation cases and to hold original hearings on claims for compensation.

The two terms "hearing" and "compromise settlement" must not be confused in the enforcement and application of the sections in the Act providing for the carrying out of both such proceedings. Section 287.390, RSMo 1949, authorizes the compromise and settlement of disputes between employers and employees under the Act. That section was Section 3729 in the Revision of 1939, and was Section 3333 in the Revised Statutes of 1929. Section 287.460 is our present section in the Compensation Act providing for original and formal hearings of claims for compensation. That section in the Revision of 1939 was Section 3729, and in the Revision of 1929 was Section 3339.

Our Courts have repeatedly said that there is a clear and necessary fundamental distinction between the two remedies under the Act. One instance, in the case of *LaTour vs. Green Foundry Co., et al.*, 93 S.W. (2d) 297, the

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St. Louis Court of Appeals, in speaking of a "rehearing and review", a step taken after an award, as being different from a compromise settlement, l.c. 301, said:

"Moreover, a rehearing and review as provided by section 3340, ending, diminishing, or increasing compensation previously awarded, can have no application to compromise settlements under section 3333 (Mo. St. Ann. § 3333, p. 8267). * * * Burnham v. Keystone Service Co. (Mo. App.) 77 S.W. (2d) 848, 854.)"

The quote just given was a paragraph quoted from the Burnham case, 77 S.W. (2d) 848, 854. The original Burnham case, 77 S.W. (2d) 848, very clearly discusses the distinction between a hearing and a settlement and we believe a reference to and the quotation of what the Court held will be beneficial here in dispelling any confusion which might exist, with reference to the carrying out of a compromise settlement or the making of an award upon a formal hearing and the necessarily differences in the effect resulting from the carrying out of either of said remedies. The Court on this point, l.c. 852, 853, said:

"By the final agreement and report of facts and the final report and receipt for compensation, every controverted issue in the cause was eliminated. Every issue was determined and settled by the parties; and there remained no controverted issue in the cause for determination by the commission; and, by its purported award of December 28, 1931, it determined none. By its own record, it disclosed that, upon the evidence gathered upon the hearings held by it, it was unable to determine the extent of respondent's permanent partial disability and suspended proceedings upon its part for further hearing therefor, except upon request thereafter by respondent for a resetting of the case upon further evidence to be produced. No such request appears ever

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to have been made, and no further hearing appears ever to have been held by the commission. So far as the record discloses, the parties voluntarily, of their own accord, entered into the agreement for settlement, and, for the purposes of complying with the requirements of section 3333, supra, filed it with the commission for its approval, in order to make it legal, binding, and final. The commission was not required or authorized to make any award thereon. All that it was required or authorized to do was to examine the settlement and receipt, and, if found to be in accordance with the rights of the parties under the act, approve them or, if not so found, to reject them. It did approve the agreement for settlement so filed with it by the parties together with the receipt. The purported award by the commission, being unauthorized, was without effect as an award under section 3340, and served no useful purpose. It, at best, was a mere confirmation of the compromise already approved. *Brown v. Corn Products Refining Co., supra.*"

The Appellate Courts of this State have made it clear that an award upon a hearing is not a settlement, neither is a compromise settlement upon agreement between the parties an award. This question was discussed by the Kansas City Court of Appeals in the case of *Brown vs. Corn Products Refining Co., et al., 55 S.W. (2d) 706*. That Court, pointing out the point of controversy in the case, l.c. 707, said:

"The chief point of controversy between the parties and the main one for settlement on this appeal is whether, under the facts disclosed by the record, there was a valid compromise and settlement as contemplated by section 3333, R.S. Mo. 1929 (Mo. St. Ann § 3333), or whether the facts are such as to authorize the commission to rehear and review the case and make an additional award as contemplated by section 3340, R.S. Mo. 1929 (Mo. St. Ann. § 3340)."

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Again, the Court in stating the distinction between the two proceedings, l.c. 710 further said:

"* * * The so-called award on agreement, made in this case after the compromise was reached, approved, and executed, is not an award after hearing by the commission of contested issues authorized under other sections of the statute. * * *."

The St. Louis Court of Appeals again defining this distinction in the case of Dewey vs. Union Electric Light and Power Co., 83 S.W. (2d) 203, l.c. 206, said:

"So it is that a voluntary compromise settlement agreement made and executed by the parties under section 3333, and approved by the commission, is not thereafter reviewable on the ground of a change in condition; nor is the commissioner's mere approval of a receipt for compensation voluntarily paid, given upon a mere examination of the receipt by the commission and without a hearing upon the issues, to be regarded as an award within the contemplation of section 3340, so as to be thereafter subject to modification and review by virtue of its provisions. * * *."

We are assuming from the wording of the letter that the word "hearing" is not referred to as a formal hearing, such as is provided for in Section 287.460, RSMo 1949, but is intended to mean, and, as we view all of the language of the request for this opinion, does mean, merely a conference held by an individual member of the Commission with the parties to a claim incident to a compromise settlement. If our understanding of the wording of the request as just stated is correct, we believe, and we here further confirm the said former opinion of this office in that behalf, that an individual member does have the right to approve a settlement between the parties to a claim for compensation under the Act even if the matter is pending upon review before the Industrial Commission, or on appeal to the Circuit Court or to the Appellate Courts of this State. Our former opinion of date January 21, 1952, citing the Tokash case, 139 S.W. (2d) 978, on pages 6 and 7 of said opinion as authority, so holds.

However, if, on the other hand, your request is intended to mean, and does mean to ask what authority, after an award has been made by a Referee of the Division of Workmen's

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Compensation and the matter is pending before the Industrial Commission on an application for review, an individual member has to hold a hearing, such as is provided in said Section 287.460, and make an award at such hearing, we think such individual member does not have such authority. He may, however, as said in our former opinion, hold an original hearing and make an award, if the parties to a claim submit their dispute to him. In such case, however, such an award would not be a settlement. It has been held by our Appellate Courts in numerous cases, construing the terms of Section 287.480, RSMo 1949, respecting the powers of the full Commission on review, where the original hearing was not held before the full Commission, that the full Commission may conduct a further hearing, take testimony and change or make a different award. (Pearson vs. Randall, 91 S.W. (2d) 116, 230 Mo. App. 416, and other cases cited, page 337, Annotations V.A.M.S. under Section 287.480). No such power, however, is given to an individual member of the Commission in Section 287.480 or any other section of the Act. So, therefore, it clearly appears from the terms of said Section 287.480 that an individual member of the Commission, either with or without the knowledge of the full Commission could not hold a hearing, review evidence, take testimony or change an award previously made and on appeal for review before the full Industrial Commission. That section plainly gives the full Commission complete jurisdiction to review a case and further conduct a hearing on the facts at issue to the exclusion of an individual member of the Commission. It is the view of this office that an individual member of the Commission would have the authority under the cases cited and quoted in the said former opinion of this office dated January 21, 1952, and referred to in this opinion with other authorities to approve a compromise settlement at any time wheresoever a controversy between an employer and an employee under the Act may be pending. It is the further view of this office that an individual member of the Industrial Commission has no authority to hold a hearing for any purpose when a claim for compensation under the Act is pending before the full Commission on review under Section 287.480 of an award previously made by a Referee in the case.

We trust this additional opinion will be of benefit to the Commission on the questions submitted to this office.

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CONCLUSION.

It is, therefore, considering the premises, the opinion of this office that:

1) An individual member of the Industrial Commission of this State may approve compromise settlements of claims for compensation under the Act between employers and employees whenever and wherever the parties to such claims have agreed upon a settlement and submit such settlement to such individual member for approval;

2) It is the further opinion of this office that after an award has been made by a Referee on a claim for compensation under the Act and the claim is pending before the full Commission by appeal on review, an individual member of the Commission has no authority to hold a hearing such as is provided in Section 287.460 for any purpose.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Very truly yours,

JOHN M. DALTON
Attorney General

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