

The Division of Workmen's
Compensation may, under Sec.
: 3727, R.S. Mo. 1939, adopt
: and enforce rules of procedure
: in the administration of the
: Compensation Act.

October 8, 1948



Honorable Spencer H. Givens
Director
Division of Workmen's Compensation
Jefferson City, Missouri

Dear Director Givens:

This will acknowledge your letter requesting the opinion of this Department on the question of the validity of rules and regulations for the administration of the Workmen's Compensation Act, particularly Rule 3 of paragraph II of the Rules and Regulations adopted by your division, a set or copy of which rules you transmit with your letter.

Inasmuch as your letter submits two or three pertinent questions, we are copying the letter in this opinion. It follows:

"In connection with the authority given us in Section 3751, R.S. Mo. 1939, to '... make such rules and regulations as may be necessary...' to carry out '...all of the provisions of this chapter...' we are asking your opinion on the following:

"Rules and Regulations governing the Administration of the Missouri Workmen's Compensation Law were adopted by the Division of Workmen's Compensation July 7, 1948, (which are revised rules and regulations to take care of new amendments to the law effective July 18, 1948). They were approved the same day by the Industrial Commission, in compliance with the law (Laws of Missouri, 1945, Sec. 6(d) p.1103) and a certified copy was filed also the same day with the Secretary of State.

"We have attached for your convenience a printed copy of the Rules and Regulations above referred to, and direct your

attention (on page 5) to Rule No. 3 under the caption 'II. Contested Cases,' dealing with 'Failure to File Answer.' Our questions are on this rule and are as follows:

"1. The statute (Section 3727, R.S. Mo. 1939) provides for the filing of a claim, but the requirement for the filing of an answer is an administrative device of the Division of Workmen's Compensation to promote orderly procedure in the handling of litigated cases. It enables us to determine the actual issues in dispute.

"Question: Is the authority given us to adopt rules and regulations broad enough to enable us to establish the requirement for 'Answer to Claim for Compensation?'

"2. To make Rule 3 effective, we have established a penalty for failure to file within the period, such penalty being that 'the statements in the claim for compensation shall be taken as admitted.'

"Question: Is the authority given us to adopt rules and regulations broad enough to enable us to establish this penalty and to enforce it?

"3. If the answers to questions 1 and 2 are in the affirmative, can a referee enter a 'default judgment' by issuing an award of compensation on the claim alone; or should such witnesses as are available be heard?

"4. Under the statute the Division has jurisdiction only when the employer and employee are under the Act. Is the allegation in the original claim

that employer and employee are under the Act sufficient, or must it be proved by evidence? And must the allegation be proved if the 'statements in the claim for compensation shall be taken as admitted' as provided in above quoted Rule 3 (assuming that said Rule 3 is valid)? Without proof that parties are under the Act, does the Division acquire jurisdiction?"

The particular question submitted in your request for this opinion is: If the authority given to your Department to adopt rules and regulations is broad enough to require an "Answer to Claim for Compensation", and if, in order to make such rule effective, you have the further right to provide that if the Answer is not filed within the period fixed by your rules you may provide that "the statements in the claim for compensation shall be taken as admitted."

Section 3751, R.S. Mo. 1939 of the Workmen's Compensation Act provides, in part, as follows:

"The commission and its members shall have such powers as may be necessary to carry out all the provisions of this chapter, and it may make such rules and regulations as may be necessary for any such purpose. * * * ."

Section 3764, R.S. Mo. 1939, as a part of said Act, is as follows:

"All of the provisions of this chapter shall be liberally construed with a view to the public welfare and a substantial compliance therewith shall be sufficient to give effect to rules, regulations, requirements, awards, orders or decisions of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto."

Section 3727 of the Workmen's Compensation Act provides that an employee or his dependent, having a claim for compensation against his employer under the Act shall file a written claim within one year after the injury or death upon which the claim is made has occurred. There is no statute in the Compensation Act requiring an Answer to be filed. The intent and purpose of the Legislature, as it appears from Section 3723 of the Act is that, if an employee is injured in the course of his employment, and upon notice to the Commission, and notice to the employer, the Commission shall send to both employee and employer a form of agreement so that the matter could be compromised and settled without proceedings of any sort, a report of which is to be made to the Commission. However, if a controversy arises, then under Section 3727, the claim must be filed.

Section 3739, R.S. Mo. 1939, with respect to procedure before the Commission, is as follows:

"All proceedings before the commission or any commissioner shall be simple, informal and summary, and without regard to the technical rules of evidence, and no defect or irregularity therein shall invalidate the same. Except as herein otherwise provided, all such proceedings shall be according to such rules and regulations as may be adopted by the commission."

Section 3739 has been construed and interpreted by our Appellate Courts, in decisions hereinafter quoted, to mean that the procedure under the Compensation Act shall be in disregard and to the exclusion of the rules of formal procedure.

The authority granted by Section 3751 of the Compensation Act to the Commission to make such rules and regulations as may be necessary to carry out the provisions of the Act does not constitute a delegation of legislative power to the Commission, or conflict with the Constitution. Section 16 of Article IV of the Constitution authorizes the Legislature to pass laws permitting administrative agencies of the State to make such rules and regulations. Said Section 16 of Article IV is as follows:

"Filing of Administrative Rules and Regulations.--All rules and regulations of any board or other administrative agency of the executive department, except those relating to its organization and internal management, shall take effect not less than ten days after the filing thereof in the office of the secretary of state."

Returning again to the terms of Section 3739 and Section 3764, R.S. Mo. 1939, respecting the liberal construction of the Workmen's Compensation Act in favor of the employee, we find those sections construed and applied by the St. Louis Court of Appeals in the case of Vogt vs. Ford Motor Co., 138 S.W. (2d) 684. The Court in relation thereto, l.c. 686, said:

"* * * Under the Workmen's Compensation Act all proceedings before the Commission shall be simple, informal and summary. Section 3349, R.S. 1929, Mo. St. Ann. Sec. 3349, p. 8283. And all provisions shall be liberally construed with a view to the public welfare and a substantial compliance therewith shall be sufficient to give effect to rules, regulations, requirements, awards, orders or decisions of the Commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto. Section 3374, R.S. 1929, Mo. St. Ann. Sec. 3374, p. 8293. The very object and purpose of the entire act is that substantial rights are to be enforced at the sacrifice of procedural rights. * * * ."

The same construction upon the intent and purpose of the Legislature in passing the Act had been previously given by the St. Louis Court of Appeals in the case of Schrabauer vs. Schneider, 25 S.W. (2d) 529, where the Court, l.c. 535, said:

"In the positive legislative intent thus expressed throughout the act, there must have been a definite purpose in view, which we think undoubtedly was that, in the administration of

the law, 'procedural matters are to be treated as subsidiary in enforcing the substantive rights of the parties, and that a prima facie presumption is to be indulged in favor of the commission's jurisdiction in a case otherwise coming within the act. * * * ."

The authority then appears to be evident and conclusive that the Legislature was acting within its legislative powers under the Constitution to authorize the Workmen's Compensation Commission to promulgate such rules and regulations as it may find to be necessary to give effect to the whole of the Act. The rules in question were adopted by the Workmen's Compensation Commission and approved by the Industrial Commission of Missouri acting jointly under sub-section (d) of Section 6 of Senate Bill No. 246 creating the Department of Labor and Industrial Relations, and found in Laws of Missouri, 1945, page 1101, l.c. 1103. These rules are lawfully promulgated with the approval of the Industrial Commission of the State of Missouri, under sub-section (c) of Section 6 of said Senate Bill No. 246, Laws of Missouri, 1945, page 1101, l.c. 1103, under the terms of Section 3751, R.S. Mo. 1939.

There has been general approval in every jurisdiction, sofar as we are advised, by both text-writers and the Courts, of the power of boards or commissions under the Workmen's Compensation Acts of the different States to adopt and effectuate rules of procedure for the enforcement of such acts under legislative authority, and here in Missouri, as hereinabove noted, we have definite constitutional authority for the promulgation of such rules under said Section 16 of Article IV of the Constitution.

71 C.J. 922, 923, under the title of "Workmen's Compensation Act" states the following text:

"The board is authorized to make such orders as in its judgment may meet the ends of justice, and to promulgate reasonable rules of procedure relative to the exercise of its powers and authority for the protection of those who are injured, and also to protect the rights of the employer and of the insurance carrier, and to safeguard the state insurance fund. The rules, however, must be reasonable, and must not be inconsistent with the

workmen's compensation act or with other laws of the state, * * * ."

It will be noted that the text-writers and the Courts in discussing the authority of boards and commissions of administrative agencies of the State to make rules and regulations hold that they must be reasonable. Referring again to Rules 2 and 3 of the Rules and Regulations here being considered, providing that the employer and/or insurer shall file answer to the claim on Form 22 provided by the Commission, and that upon failure to file such answer within fifteen (15) days from the date of acknowledgment of the receipt of a claim by the Division, the statements in the Claim for Compensation shall be taken as admitted, seem to be entirely reasonable and unaffected with the denial of any right to anyone concerned. In this connection we think it well to have in mind what the authorities say with respect to the time in which answer shall be filed. 71 C.J. 1052 on the point states this text:

"Where a rule of the board requires special defenses to be pleaded a specified time before the hearing, a compliance with the rule is essential, * * * ."

There are numerous decisions from other States construing the power of boards or commissions administering Workmen's Compensation Acts to make and enforce rules respecting the filing of an answer, and to refuse to allow an answer to be filed out of time, and disallowing the introduction of evidence on any matter not made an issue by answer. The Appellate Court of the State of Indiana had this subject before it in the case of Freund et al. vs. Allen, reported in 184 N.E. 421. The Court in its decision, holding that where the rules of the Industrial Board (comparable to our Compensation Commission) requiring an answer to be filed within a certain time, and holding that the board acted within its lawful rights in refusing an answer to be filed out of time, l.c. 423, said:

"Appellants Friends did not offer to file their special answers as required by the rules of the Industrial Board, so there was not an abuse of discretion in refusing to allow them to be filed."

The same Appellate Court of Indiana in the case of Wright et al. vs. Keltner, 159 N.E. 433, on the same principle, l.c. 434, said:

"The rule requiring special defenses to be filed prior to the day of the hearing is a wholesome rule and one of which appellant was required to take notice. There was no reversible error in the action of the board in refusing to hear evidence in support of the defense of willfulness and intoxication. * * * ."

The Supreme Court of Michigan had the same principle before it for discussion and decision construing rules such as we are considering here, in the case of Sharp vs. Trust Co., 236 N.W. 831. The Court, l.c. 832, said:

"* * * ' * * * If the employer or insurer desires to deny liability an answer to the plaintiff's claim shall be filed with the Department in writing * * * .'
* * * 'The rule in question was within the power of the board to adopt. It is reasonable and valid; it not only binds the boards, and litigants before it, but it binds this court. Being reasonable and within the power of the board, this court must follow it, and recognize it in cases coming here for review.' * * * ."

None of the several States, decisions from the Appellate Courts of which are hereinabove noted, require by statute an answer to be filed in Workmen's Compensation cases. In this respect they are identical with the State of Missouri.

There is no decision from our Supreme Court or Courts of Appeals passing upon the validity of such a rule, with respect to an answer. Our Supreme Court, however, has expressed its views of the administration of the Workmen's Compensation Act in such language as to persuade us to believe that if and when the matter might come directly before the Court it would have sound authority upon which to rely on this question in the decisions hereinabove cited. In the case of Liechty vs. Bridge Co., 162 S.W. (2d) 275, the Court discussed our Compensation Act and gave its views upon the procedure to be followed by the Commission in making the Act effective. The Court, in its decision, l.c. 279, so expressing its views, said:

"* * * And, while it is true that the Commission cannot usurp judicial functions

contrary to the constitutional inhibition, it has those powers which are incidental and necessary to the proper discharge of its duties in administering the Compensation Act, Rev. St. 1939, Sec. 3689 et seq. (Mo. R.S.A. Sec. 3689 et seq.) and it frequently happens that a full discharge of those duties requires the Commission to determine questions of a purely legal nature, such as whether the employee was covered by the contract of insurance or whether the employee had received a compensable injury in the course of his employment; whether the alleged employee was an independent contractor or whether he was employed by an independent contractor rather than by the alleged employer. These and many other judicial questions, as far reaching as the question of law involved in this case, have uniformly been held to be proper questions for the Commission's determination in the proper administration of the Compensation Law. In fact, if the commission should be denied such power, it would practically be impossible for the Commission to perform its duty of administering the Act. * * * ."

Our Appellate Courts have said statutes with respect to the administration of the Compensation Act are to be liberally construed, especially respecting remedial or procedural matters. Our Supreme Court has so held in numerous cases. One of such cases is *McManus vs. Park*, 287 Mo. Rep. 109, where the Court on this principle, l.c. 119, said:

"* * * remedial statutes; where such statutes are ambiguous, or of doubtful application, * * * are liberally construed in order to effect the purpose of their enactment. * * * ."

The rule to which our attention is directed providing for an answer to be filed, and prescribing the period in which it shall be filed, and further providing that unless so filed the statements in the claim shall be taken as admitted, takes nothing away from the employer. The right granted him to file

answer is one not provided him by statute. But it is not a vested right. If he neglects or fails to take advantage of the privilege, he himself creates the limitation upon the introduction of evidence which might have been offered if his defense had been stated in an answer. In such case he should not be heard to complain. The cases hereinabove cited and quoted on the point preclude him from so complaining.

One of the questions you submit in your letter in paragraph (3) is, that if questions 1 and 2 are answered in the affirmative, may a referee or the Commission, enter a "default judgment" and make an award of compensation on the basis of the matters alleged in the claim alone, or must such witnesses as are available be heard. We believe the statements heretofore made in this opinion, with respect to questions 1 and 2 are sufficient answer to this question. If the employer or the insurer has a defense to the claim, under your rules he must controvert the same and make the matter issuable by answer, and if an answer is not filed within the time prescribed by the rule, the Commission, or a referee, would be justified in excluding evidence on such issue. If, on the other hand, there should be witnesses at hand who could give evidence on some matter not made issuable by an answer, but which would reveal all the facts in the development of the case, we believe the Commission, or referee, should hear such evidence.

The question submitted under paragraph 4 of your letter is, whether an allegation in the original claim that the employer and the employee are under the Compensation Act is sufficient without evidence to prove the same, and upon which to base an award, in the event there is no answer denying such allegation, on the ground that "statements in the claim for compensation shall be taken as admitted." This, too, we think, has been covered in the discussion in this opinion of Rules 1 and 2. In such case, we believe, the claim should necessarily, as a jurisdictional matter, state that both the employer and employee are under the Act. If this be stated in the claim and be not denied, it would be an admission by the employer that both are under the Act. It would be almost incredible to believe that an employer, who could in good faith make such a defense, would fail to interpose the same by the denial thereof in an answer.

However, the record upon a hearing of any claim should recite all jurisdictional facts. We believe that even though no answer should be filed denying a statement in a claim that

the employee and employer are both under the Act, a referee, or the Commission should hear evidence in support of all jurisdictional matters, including the fact that both the employer and employee are under the Act. The Commission, under the Act, has limited or special jurisdiction in the hearing of claims. There are no presumptions to be indulged in favor of the Commission's jurisdiction. Like records of Courts of inferior, limited or special jurisdiction, the records of the Commission must affirmatively show that there was jurisdiction of both the employer and employee under the Act. 15 C.J. 832, 833 and 834, states the rule as to inferior courts on this principle, as follows:

"The mere exercise of jurisdiction by courts of inferior, limited, or special jurisdiction does not raise a presumption of the existence of the requisite jurisdictional facts, for nothing is presumed to be within the jurisdiction of such courts; but one who relies upon a decision or order of such a court, or who claims any right or benefit under its proceedings, must affirmatively show its jurisdiction in the premises by alleging and proving the same. * * *."

If this be true as to inferior courts it would likewise be an appropriate rule to follow respecting the jurisdiction and authority of the Compensation Commission. It would, therefore, be necessary, we think, for the Commission or referee to take proof showing jurisdiction on this question and the record should recite the same.

CONCLUSION.

It is, therefore, the opinion of this Department:

1) That under Section 3727, R.S. Mo. 1939, rules adopted by the Division of Workmen's Compensation and the Industrial Commission of Missouri for the administration of the Workmen's Compensation Act are broad enough and necessary in the enforcement of the Act "to establish the requirement for 'Answer to Claim for Compensation.'."

2) That the Commission has the power to make and enforce a rule that the answer must be filed within a definite period.

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3) That the Commission has the power under said Section 3727, in the promulgation of its rules to refuse the offer of evidence on any matter not made an issue by an answer, except facts touching the jurisdiction of the Commission.

4) That regardless of whether it is denied in an answer that the employer and the employee are both under the Act, evidence should be heard under the claim that both are subject to the Act, in support of jurisdiction, and the record should so state.

Respectfully submitted,

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APPROVED:

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