Summaries

S.C. Workers' Compensation Appellate Decisions

3/9/00 to 3/26/01

By Sam Painter

NOTE: The following are brief summaries of sixteen decisions which involved workers' compensation issues that were reported from March 9, 2000 to March 26, 2001 by the South Carolina Supreme Court or the South Carolina Court of Appeals. (They are listed in reverse chronological order, with the most recently reported cases listed first.) The author intends that these summaries, as well as the summaries of all such decisions reported from January 1, 1978 through March 8, 2000 will be included in the **South Carolina Workers' Compensation Casebook** [**7th Edition. 2002**].

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<u>Shealy v. Aiken County</u>, 341 S.C. 448, 535 S.E.2d 438 (2000). MENTAL INJURIES/ STRESS. THE PHRASE "UNUSUAL AND EXTRAORDINARY CONDITIONS OF EMPLOYMENT" REFERS TO THE WORKER'S PARTICULAR EMPLOYMENT, NOT TO CONDITIONS OF EMPLOYMENT IN GENERAL. ISSUES NOT CONSIDERED BY CIRCUIT COURT JUDGE MUST BE PRESERVED BY RULE 59(e) MOTIONS TO BE CONSIDERED ON APPEAL.

Shealy was employed by the Aiken County Sheriff's Department as an undercover narcotics agent from November 1990 until December 24, 1992. He had held a similar position with the Lexington County Sheriff's Department from 1981 to 1990, and had developed depression and an alcohol problem. Shealy's job was undeniably stressful. It required him to deal with an assortment of dangerous criminals and with constant death threats. He also had a number of "non-job stressors" (a divorce, a custody dispute, a bankruptcy). On December 30, 1992, Shealy was admitted to Baptist Medical Center for depression, suicidal thoughts, post-traumatic stress disorder and acute alcoholism. Although he worked sporadically thereafter and apparently stopped drinking, he was found totally disabled by two physicians in 1995. A workers' compensation claim followed. A single commissioner awarded Shealy benefits for aggravation of pre-existing alcoholism and psychological injury resulting from extraordinary conditions of his employment. The full commission reversed and denied the claim. The Court of Appeals, in an unpublished decision, also affirmed the denial. The South Carolina Supreme Court granted certiorari.

<u>HELD</u>: The Supreme Court also affirmed, holding that there was substantial evidence to support the full commission's ruling that the claimant had failed to meet his burden of proof. In so doing, the Court noted that compensability is determined by what are unusual or extraordinary conditions of the claimant's particular employment, not by what might be unusual or extraordinary conditions of employments in general. Also, the Court held that two arguments Shealy wished to make were not preserved for appeal because they were not ruled on by the circuit court and no Rule 59(e) motion was made.

Dawkins v. Jordan, 341 S.C 434, 534 S.E.2d 700 (2000). EMPLOYMENT. FACTORS TO DIFFERENTIATE BETWEEN EMPLOYEE AND INDEPENDENT CONTRACTOR.

Dawkins was injured during a fence installation job. He claimed to be Jordan's employee. Jordan said they were partners. The single commissioner and full commission awarded benefits. The circuit court reversed. The Court of Appeals affirmed the circuit court, finding that Dawkins had failed to prove he was an employee under the four factor test. The four factors are as follows: (1) direct evidence of the right or exercise of control; (2) method of payment; (3) furnishing of equipment; (4) right to fire. Dawkins petitioned for writ of certiorari, which was granted.

HELD: The Supreme Court reversed the Court of Appeals. It noted that with regard to the right to fire and the method of payment, testimony was in dispute. While the Court recognized that an appellate court is not bound by the findings of fact of an administrative agency on a jurisdictional issue, the court was not inclined to reverse the full commission's apparent determination that Dawkins, the claimant, was more credible than Jordan.

<u>Nettles v. Spartanburg School District #7</u>, 341 S.C. 580, 535 S.E.2d 146 (Ct. App. 2000). BACK INJURY REQUIRING GRAFT FROM HIP BONE; LOSS OF EARNING CAPACITY.

Nettles injured her back. She had an operation where bone was harvested from her hip. She developed hip pain and had two subsequent operations to alleviate her hip pain. She took medications for the hip pain that caused stomach ulcerations. The single commissioner awarded her 25% of the back and 10% of the stomach. The full commission and circuit court affirmed. Nettles appealed.

<u>HELD</u>: The Court of Appeals held that the claimant had failed to prove her entitlement to a general disability award because there was no evidence of loss of earning capacity. The Court also affirmed the Commission's findings of fact with regard to the date of maximum medical improvement (MMI). The Court remanded the case for further findings of fact regarding the extent of injury to the hip and the claimant's entitlement to additional medical expenses.

Brown v. Bi-Lo, Inc. 341 S.C. 611, 535 S.E.2d 445 (Ct. App. 2000). MEDICAL BENEFITS. PHYSICIAN MUST PROVIDE EMPLOYER AND CARRIER MEDICAL INFORMATION UPON REQUEST. EX PARTE COMMUNICATIONS BETWEEN PHYSICIANS AND REPRESENTATIVES OF EMPLOYERS/CARRIERS ARE PERMISSIBLE.

Brown moved to Pennsylvania while still receiving medical treatment for a work related accident. Bi-Lo hired a rehabilitation nurse in Pennsylvania to contact her physicians. Brown's attorney in South Carolina wrote the rehabilitation nurse and Brown's doctors warning them not to engage in communications with Bi-Lo or its representatives unless he was present. As the result of this letter, one of the physicians indicated he would not respond to Bi-Lo's representatives. Bi-Lo sought and obtained an order from a single commissioner ordering Brown's attorney to cease and desist from obstructing communications between Bi-Lo's representatives and Brown's physicians. The full commission and circuit court affirmed. Brown appealed.

HELD: The Court of Appeals also affirmed. The Court held that the physicians did not violate any duty of confidentiality to the patient because the South Carolina Workers' Compensation Act compels physicians to provide employers with all medical information and facts relevant to the claim communicated to them by an employee during treatment. See, 42 S.C. Code Ann. Section 42-15-80, 42 S.C. Code Ann. Section 42-15-95 and Regulation 67-1301(A). Additionally, the Court saw no reason to ban ex parte communications between physicians and the employer's representatives. The court reasoned that this gave the employer the same access to the doctors as the employee's own attorney would have.

<u>Adams v. Texfi Industries</u>, 341 S.C. 401, 535 S.E.2d 124 (2000). STEPCHILD MUST SHOW RELIANCE UPON THE DECEASED EMPLOYEE FOR THE REASONABLE NECESSITIES OF LIFE; SUBSTANTIAL EVIDENCE RULE.

Adams died in a work related airplane crash. He was survived by his widow, an adopted daughter, and a step-daughter. The issue was whether the step-daughter was a whole dependent who would share in the distribution of death benefits. In 1995, the Supreme Court had ruled in the same case that to be a dependent, the step-daughter would need to prove that she looked to the deceased employee for the reasonable necessities of life. The case was remanded to the Workers' Compensation Commission for further findings. The Workers' Compensation Commission determined that the step-daughter relied upon the deceased for the reasonable necessities of life and was sufficiently dependent. Factors it considered included the following: the deceased employee provided medical insurance, braces, household utilities, groceries, car expenses, clothing, summer camp and made payments on the indebtedness on the family home. The decedent had declared the step-daughter as a full dependent on a joint return. The circuit court affirmed, but the Court of Appeals reversed. The Court of Appeals pointed out that the step-daughter's natural father paid child support, and her natural mother was employed.

<u>HELD</u>: The Supreme Court reversed the Court of Appeals and reinstated the full commission's order finding that the step-daughter relied upon the employee for the reasonable necessities of life. The Supreme Court found that the full commission's finding on this issue was based upon substantial evidence and therefore should not have been reversed on appeal under the substantial evidence rule.

<u>Aughtry v. Abbeville School District #60</u>, 340 S.C. 604, 533 S.E.2d 885 (2000). ARISING OUT OF AND IN THE COURSE OF; GOING AND COMING RULE NOT APPLICABLE TO INJURY OCCURRING ON THE PREMISES.

Aughtry, an assistant principal at Abbeville High School, injured his back in a single vehicle accident which occurred while he was driving to school over an icy road. A two hour opening delay had been announced, but Aughtry understood that his principal wanted him to report to work at the usual time. His car hit a patch of ice just off the school premises. His car left the road and crashed onto the football field. The single commissioner denied the claim on the basis of the going and coming rule. The full commission reversed, finding that the injury arose out of and in the course of the employment, and that the way to work was inherently dangerous. The circuit court affirmed. The school district appealed. The Court of Appeals initially affirmed that the claim was compensable for two reasons. First, it held that the "going and coming rule" was not applicable because the injury occurred on the premises. Secondly, it held that even if this was a "going and coming" case, it was compensable under the "inherently dangerous exception" to that rule. The school district petitioned for rehearing. Then, the Court of Appeals withdrew its original opinion and reversed the full commission and circuit court. The majority held that Aughtry's claim did not fall within any of the recognized exceptions to the "going and coming rule." Aughtry's claim was denied. The justice who issued the original opinion dissented. Aughtry petitioned for writ of certiorari to the South Carolina Supreme Court. It was granted.

<u>HELD</u>: In its initial decision, the Supreme Court reversed the Court of Appeals, finding that the claimant's accident came within the "special errand exception" of the going and coming rule. The school district petitioned for rehearing, which was granted. In its second opinion, the Supreme Court withdrew its earlier opinion and held the "going and coming" rule did not apply to this injury because it had occurred on the employer's premises (<u>i.e.</u>, Aughtry's vehicle crashed into the school's football field).

<u>Nelson v. Yellow Cab Co.</u> 343 S.C. 102, 538 S.E.2d 276 (Ct. App. 2000). EMPLOYMENT; JURISDICTIONAL ISSUE; DETERMINING FACTOR IS THE RIGHT OF CONTROL, NOT THE AMOUNT OF ACTUAL CONTROL EXERCISED; NORTH CAROLINA DECISIONS ARE TO BE GIVEN WEIGHT BUT ARE NOT CONTROLLING.

Nelson, a part-time taxi driver, was dispatched by Yellow Cab to pick up a passenger. He was murdered, apparently by the customer. His estate filed a claim for workers' compensation death benefits against Yellow Cab and its carrier. Nelson had signed an application to drive for Yellow Cab wherein he acknowledged he was not an employee. Yet, Yellow Cab had numerous rules and regulations governing the drivers, including a dress code. A single commissioner denied the claim. The full commission reversed and awarded benefits. The circuit court reversed the full commission, finding Nelson was an independent contractor. The estate appealed.

<u>HELD</u>: The Court of Appeals reversed the circuit court and found that Nelson was an employee. The Court held that the test to be employed is the right to control, not the amount of actual control exercised. In holding the taxi driver was an employee, the Court of Appeals declined to follow a North Carolina decision with substantially similar facts where the taxi driver was held to be an independent contractor. The Court of Appeals ruled that while North Carolina decisions are entitled to weight, the South Carolina courts are not bound by them.

Pee v. AVM, S.C. , 543 S.E.2d 232 (Ct. App. 2001). CARPAL TUNNEL SYNDROME AS INJURY BY ACCIDENT.

Pee was employed by AVM in various capacities from 1987. Each of her jobs involved repetitive use of her hands. In 1995, Pee was diagnosed as having carpal tunnel in both wrists. She had release surgery on her left wrist in June and was released to return to work in July. In 1996 her symptoms returned to her left hand and her right hand worsened. The treating neurologist removed her from work beginning April 20, 1996. Pee filed a claim for workers' compensation benefits, asserting accidental injuries from repetitive trauma to both arms. AVM denied the claimant sustained an injury by accident. The single commissioner, full commission and circuit court judge all ruled in favor of Pee. AVM appealed.

HELD: Noting that this was a case of first impression, the Court of Appeals held that the Workers' Compensation Commission did not err in treating carpal tunnel syndrome as an injury by accident. In so doing, the Court pointed out that an injury need only to be unexpected to be an injury by accident, and that there is no requirement in the Act that an injury be distinct, as opposed to gradual.

Brunson v. Wal-Mart Stores, Inc. S.C. , 542 S.E.2d 732 (Ct. App. 2001). **DETERMINATION OF AVERAGE WEEKLY WAGE. EFFECT OF SECOND JOB HELD DURING HOLIDAY SEASON.**

Brunson, a senior at the University of South Carolina, was injured during the Christmas break while working for Wal-Mart. Two days earlier he had taken a second job working for Osteen Publishing Company. His plans were to work only for Osteen after he returned to school. The single commissioner determined his average weekly wage by adding his average weekly wage at Wal-Mart to one half of his average weekly wage at Osteen. The full commission and the circuit court affirmed. Wal-Mart appealed.

HELD: The Court of Appeals reversed and remanded the case for further findings. The court wanted the Commission to determine how long Brunson would have worked both jobs. Then, it directed the full commission to "reconsider the calculation of Brunson's average weekly wage in light of the exceptional reason of his temporary dual employment solely over the holiday season." DISSENT: One judge dissented, finding that the method used by the Commission to determine the average weekly wage was within its discretion in this case.

<u>Anderson v. Baptist Medical Center</u>, 343 S.C. 487, 541 S.E.2d 526 (2001). AGGRAVATION OF PRE-EXISTING PSYCHIATRIC PROBLEMS; AVERAGE WEEKLY WAGE (FRINGE BENEFITS NOT INCLUDED).

Anderson claimed multiple injuries as the result of a fall. She had two previous accidents. It was the employer's position that most of her injuries pre-existed. A single commissioner found that Anderson only sustained an injury to her left knee as the result of the fall. The full commission and circuit court affirmed. The Court of Appeals, in an unpublished opinion, affirmed on all issues except Anderson's claim of psychological injury, which it reversed and remanded. Both parties appealed.

<u>HELD</u>: The Supreme Court affirmed with regard to the psychological injury, finding "the only substantial evidence in the record clearly shows her condition was aggravated by the work related fall." Anderson had argued that the Commission had erred in not finding MMI dates for her shoulder and back injuries. The Supreme Court held this did not matter because the Commission had found she had injured her left knee only. Finally, the Supreme Court ruled that the claimant was not entitled to have the $95.02 per week that Baptist Medical Center paid for her medical, disability and life insurance (<u>i.e.</u>, "fringe benefits") included in the calculation of her average weekly wage.

<u>Aaron v. Viro Group</u>, S.C. , 543 S.E.2d 574 (Ct. App. 2001). SUSPENSION OF BENEFITS DUE TO REFUSAL TO SUBMIT TO INDEPENDENT MEDICAL EVALUATION PURSUANT TO SECTION 42-15-80.

Aaron had a back injury. It was an admitted claim. Aaron requested a hearing. The employer scheduled a medical examination. Aaron's attorney wrote and requested the examination be rescheduled. It was rescheduled. Aaron did not appear. The defendants filed a motion to compel Aaron's attendance and to postpone the hearing. Aaron's attorney objected. The hearing commissioner denied the motion, held a hearing, and awarded benefits. The defendants appealed to the full commission. Six months later, the full commission reversed the single commissioner, and held that Aaron's "rights to compensation and to take or prosecute any proceedings" against the defendants were suspended pursuant to the medical examination statute, Section 42-15-80. Aaron appealed to the circuit court, which affirmed. Aaron appealed.

<u>HELD</u>: The Court of Appeals reversed and remanded the case for further findings. The court directed the full commission to make "a factual determination pursuant to Section 42-15-80, whether Aaron's refusal to submit to a medical examination was justified under all the circumstances."

Lockridge v. Santens of America, Inc. **S.C. , S.E.2d (Ct. App. 2001). HEART ATTACK. WHERE THERE IS A CONFLICT IN THE EVIDENCE, THE COMMISSION'S FINDINGS OF FACT ARE CONCLUSIVE.**

Lockridge (Age 58), a "department head" at a towel factory, was required to fill in as a "lead man". The "department heads" usually did office work. The "lead men" were required to lift buckets and bags of chemicals. As Lockridge worked, he began experiencing heart attack symptoms. That evening, he was diagnosed as having had a heart attack. He had quadruple bypass surgery. One doctor believed the heart attack was causally related to lifting bags of chemicals. Another doctor would not draw a causal relationship between his work and the heart attack. The single commissioner, full commission and circuit court denied the claim. Lockridge appealed.

HELD: The Court of Appeals affirmed the denial. In so doing, the Court cited the rule that where there is a conflict in the evidence, the commission's findings of fact are conclusive.

Leviner v. Sonoco Products Company, 339 S.C. 492, 530 S.E.2d 127 (2000). FAILURE TO FILE RULE 59(e) MOTION RESULTS IN LOSS OF JURISDICTION.

Leviner was found to be at MMI and was awarded permanent disability by a single commissioner. The full commission affirmed. A circuit judge issued a form order remanding the case to a single commissioner. There was no indication on the form that a more full and complete order or judgment was to follow. Neither side filed a Rule 59(e) motion within the 10-day period allowed asking for a clarification. Thirty days after the form order was issued, a detailed circuit court order was issued, vacating the commission orders and finding Leviner totally disabled. Sonoco appealed. In an unpublished order, the Court of Appeals reversed, finding that the circuit court exceeded its appellate jurisdiction in finding total disability but remanding the case to a single commissioner as ordered. The employer petitioned for writ of certiorari, which was granted.

HELD: The Supreme Court affirmed the result. The Supreme Court held that a Rule 59(e) motion seeking clarification of the form order was necessary because the order did not state that a more complete order was to follow. The later, detailed order issued by the circuit court was a nullity because the circuit judge no longer had jurisdiction over the matter.

Hinton v. Designer Ensembles, Inc. **343 S.C. 236, 540 S.E.2d 94 (2000). RETALIATORY DISCHARGE; VIOLATION OF WORK RULE DEFENSE FOR NON-EXCUSED ABSENCES.**

Hinton, a supervisor, had a back injury on August 2, 1994. Prior to the accident, he had a perfect attendance record. He returned to work on November 1, 1994. He left work on November 2, 1994 due to pain. On November 3 and November 4, he called in and refused to work. On November 5 (a Saturday) and November 7, he failed to call. On November 8, 9, and 10, he called in. On November 11, the employer called him and terminated him for too many unexcused absences. Under the employer's work attendance policy, an employee could be terminated for being absent for five consecutive days without providing a doctor's excuse. On February 14, 1995, an authorized treating physician released him to return to work retroactive to January 20, 1995, the date his impairment was rated as 5% of the back. (He was later awarded 14% of the back.) Hinton attempted to return to work, but the employer told him he no longer had a job. He found a new job in September of 1995 but later left it over a salary dispute. He subsequently brought a retaliatory discharge action against Designer Ensembles. A circuit judge ruled in his favor, awarding him lost salary from January 20, 1995 to September 5, 1995, and ordered reinstatement. The employer appealed. The Court of Appeals, in a split decision, affirmed the award of lost wages, but reversed the award of reinstatement. The two judges for the majority pointed to Hinton's prior perfect attendance record, the timing of the firing, and the employee's "substantial compliance" with the employer's absentee policy as circumstantial evidence that the employer used the work rule as a pretext for firing Hinton for bringing a workers' compensation claim. The majority did find that reinstatement was inappropriate in this particular case due to the fact the employee had found another job in the interim and due to animosity between the parties. One judge dissented, finding that the employer had successfully established an affirmative defense (violation of a "specific written company policy for which the action [termination] is a stated remedy of the violation."). The employer petitioned for writ of certiorari, which was granted.

HELD: The Supreme Court reversed. In a unanimous decision, the Supreme Court concluded that Hinton did not establish by a preponderance of the evidence that Designer's reason for terminating him was pretextual and, "but for" filing a workers' compensation claim he would not have been terminated.

<u>Schurlknight v. North Charleston</u>, S.C. , S.E.2d (Ct. App. 2001). STATUTE OF LIMITATIONS IN CONTINUOUS EXPOSURE CASE; NECESSITY OF RULE 59(e) MOTION TO PRESERVE ISSUE FOR APPEAL.

Schurlknight worked as a fireman for the City of North Charleston for 24 years. Riding to fires exposed him to loud noises (sirens, air horns, etc.). On April 14, 1995, his physician reported "some hearing loss that fits the pattern of noise induced." He was referred to the Charleston Speech and Hearing Center. The Center's report, dated May 3, 1995, was mailed to Schurlknight. It termed his hearing loss as moderate. In a 1996 physical, Schurlknight's physician again noted a hearing loss, but described it as "minor, go back to work." In August of 1997, Schurlknight left his job due to an unrelated medical problem (migraine headaches). After leaving the job, he noticed his hearing got worse. An audiogram performed in December of 1997 showed a 22.5% loss to the right ear, a 37.5% loss to the left ear, resulting in a binaural hearing impairment of 12.5%. On March 6, 1998, Schurlknight filed a Form 50 (Notice of Claim and Request for a Hearing). The single commissioner denied the claim on the basis of the two year statute of limitations. The full commission affirmed by a vote of 2 to 1. The dissenting commissioner believed that the city and the State Fund (its carrier) should be estopped to assert the statute of limitations because they had led Schurlknight to believe his claim would be compensated. The circuit court judge agreed that the claim was barred by the statute of limitations and did not consider the estoppel issue. Schurlknight appealed.

<u>HELD</u>: The Court of Appeals affirmed the holding that the claim was barred by the two-year statute of limitations. The Court of Appeals applied the "discovery rule," which meant that the two-year statute of limitations began to run from the date Schurlknight either knew or should have known of his compensable injury. The single commissioner and full commission had found that Schurlknight knew he had a claim for hearing loss by May of 1995. Because the Form 50 was not filed until March 6, 1998, the Court of Appeals held that it was barred by the two-year statute. The Court rejected Schurlknight's argument that in a repetitive trauma case, the statute should not begin to run until the date of the employee's last exposure to the noisy conditions. Schurlknight also argued that the City of North Charleston and the State Fund should be estopped from asserting the statute of limitations. The issue was not ruled upon by the circuit judge. Schurlknight did not move to alter or amend the judgment pursuant to Rule 59(e). Therefore, the Court of Appeals held that this issue had not been preserved for appeal.

<u>Breeden v. TCW, Inc.</u> S.C. , S.E.2d (Ct. App. 2001). SUBROGATION. CARRIER'S LIEN INCLUDES FUTURE MEDICAL. NOTICE OF INTENT TO APPEAL WITH STATED GROUNDS IS SUFFICIENT.

Breeden, a truck driver, received a totally disabling brain injury in a head-on collision with another truck. The liability of the third party was clear. The third party defendant had 11 million dollars in available coverage. Breeden alleged a total economic loss of 9 million and "total cognizable damages at law" in the range of 18 to 25 million. His claim was settled for 4.2 million and his wife's claim for loss of consortium was settled for 1.8 million. Breeden asked the commission to reduce the carrier's lien ($801,713.81 at that time) under S.C. Code Ann. Section 42-1-560(f), the section that provides for "equitable distribution." The single commissioner declined to reduce the lien, awarding the carrier $801,713.81 from the 4.2 million dollar settlement. The single commissioner also held that future medicals were part of the lien, and ordered Breeden's life care expert to update his life care plan and to provide it to an annuities expert to estimate its present value. Under his order, the carrier would also be awarded the present value of the future medical benefits from the settlement. Breeden appealed to the full commission. It found Breeden's "total cognizable damages at law" were 13.5 million. Applying factors cited in <u>Kirkland v. Allcraft Steel Co.</u>, 329 S.C. 389, 496 S.E.2d 624 (1998), it reduced the carrier's lien to 31% of its current value, applied the same reduction to future compensation, and held that the carrier's lien did not apply to future medical expenses at all. The carrier appealed to the circuit court, utilizing a notice of appeal with stated grounds. Breeden cross-appealed asserting that the carrier should have used a petition for judicial review under the Administrative Procedures Act. The circuit court found the notice of appeal with stated grounds was sufficient to give it jurisdiction, and affirmed the full commission. Both the carrier and Breeden appealed.

<u>HELD</u>: First, the Court of Appeals held that the notice of appeal with stated grounds was sufficient to confer jurisdiction on the circuit court. Then, the court held that the Commission had incorrectly applied the <u>Kirkland</u> factors, which it quoted as follows:

> "In considering whether or not to reduce the lien, the commission may consider factors such as the strengths of the claimant's case, the likelihood of third party liability, claimant's desire to settle, and whether carrier is unreasonably refusing to consent to a settlement."

<u>Kirkland</u>, 496 S.E.2d at 626. The Court of Appeals concluded that while the full commission had considered the <u>Kirkland</u> factors, it "improperly analyzed" them. The full commission had also considered some additional factors such as "the carrier's conduct in fulfilling its statutory obligations" [the carrier had initially denied that Breeden, an owner-operator of his truck, was an employee] and whether the carrier has an actual expense [due to excess insurance] to be totally irrelevant. It ordered the case to be remanded to the full commission for reconsideration of the lien reduction. In so doing, the Court held that the lien includes both future compensation <u>and</u> future medical expenses. Whatever percentage reduction is eventually found would apply to both. The Court contemplated that the carrier would be allowed to establish a fund with its percentage recovery of future compensation and future medical expenses to defray its costs in future years.