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AN ORDER OF THE INDUSTRIAL COMMISSION GRANTING THE CLAIMANTS APPEAL CONSTITUTES AN "AWARD OF COMPENSATION"—IF THE INDUSTRIAL COMMISSION AWARDS COMPENSATION FOR TOTAL DISABILITY, PAYMENT ON SUCH SHOULD GO ON DURING CONTESTATION OF SAID AWARD IN THE COURTS, HOWEVER ONLY ON TOTAL DISABILITY—DURING A PENDENCY OF AN ABOVE ACTION THE PAYMENTS THEREOF SHOULD GO ON TO AN ACTION IN WHICH THE CLAIM WAS FILED PRIOR TO NOVEMBER 2, 1959—IF NO APPEAL TO THE QUESTION PENDING SAID SECTION IS EFFECTIVE PRIOR TO NOVEMBER, 1959—§§4123.518, 4123.519, 4123.01, 1.20 REVISED CODE, AMENDED SUBSTITUTE HOUSE BILL No. 470, 1959.

SYLLABUS:

1. Where pursuant to Section 4123.516, Revised Code, a claimant appeals a decision of the administrator of the bureau of workmen's compensation to the industrial commission, and pursuant to Section 4123.518, Revised Code, the commission states its decision and any award, and the employer appeals said decision of the commission to the court of common pleas under Section 4123.519, Revised Code, such decision of the commission is an "award of compensation" within the purview of Section 4123.519, Revised Code, and the claimant is entitled to payment of compen-

sation under such award and payment for subsequent periods of total disability during the pendency of the appeal.

2. In a claim for an injury that occurred on or after November 2, 1959, where the commission on appeal to it has ordered the allowance of the claim, the payment of compensation for temporary total disability for a definite period, and the payment of medical expenses, and the employer appeals the order to the court of common pleas, such payments should, pursuant to Section 4123.519, Revised Code, be made during the pendency of the appeal; but there is no authority for the payment of types of disability other than total disability during such pendency.

3. The provision of Section 4123.519, Revised Code, that an appeal from a decision of the commission in which an award of compensation has been made does not stay the payment of compensation under the award or the payment of compensation for subsequent periods of total disability during the pendency of the appeal, applies to an action in which the claim was filed prior to November 2, 1959 and the commission, on appeal to it, allowed the claim after that date; and where the decision of the commission allowed the payment of medical expenses as part of the compensation, such expenses should be paid during the pendency of the appeal in such an action.

4. Where a claim for compensation, and the order of the commission on appeal to it, allowing the claim, were made prior to November 2, 1959, and as of that date an appeal was pending in any court, Sections 4123.01 and 4123.519, Revised Code, as effective on that date, apply to the action; but if on that date no appeal on the question was pending in any court, said sections as effective immediately prior to November 2, 1959, apply to the action.

Columbus, Ohio, January 29, 1962

Hon. J. Maynard Dickerson, Chairman
The Industrial Commission of Ohio
Ohio Departments Building, Columbus 15, Ohio

Dear Sir:

Your request for my opinion asks the following:

“(1) Does an order by the Commission allowing a claim and granting a claimant’s appeal but not specifically ordering the payment of any compensation constitute an ‘award of compensation’ so that the Commission or a self-insuring employer has the right and/or duty, during the pendency of an appeal to the courts to pay compensation which was due the claimant at the time of the Commission’s order of allowance?”

“(2) In a claim for an injury that occurred on or after November 2, 1959, where the Commission on appeal to it has ordered the allowance of the claim, the payment of compensation for temporary total disability for a definite period and the payment of medical expenses, and appeal is thereafter taken to the courts by the employer, is it the right and/or duty of the Commission or the self-insuring employer during the pendency of the

for subsequent periods of total disability during the pendency of the appeal. * * *

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Your first question refers to an order allowing a claim. By this, I assume that you are referring to an appeal where the commission concludes that the claimant is entitled to a certain award. In such a case, the commission has the duty to state concisely its decision and any award (Section 4123.518, *supra*).

Once the commission has made an award, it would appear that the claimant is entitled to the award, and should be paid the compensation allowed. There is no provision requiring that an order of payment be made by the commission, and if such were needed before payment could be made, it would be needed whether an appeal was made or not made. Although appeal may be made to the court of common pleas, such appeal does not stay the payment of compensation under such award or payment of compensation for subsequent periods of total disability during the pendency of the appeal (Section 4123.519, *supra*). Accordingly, I answer your first question in the affirmative.

As to your second question, Section 4123.519, *supra*, provides for the payment of compensation during the pendency of the appeal. "Compensation" is defined in Section 4123.01, Revised Code, as follows:

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"(E) 'Compensation' includes, but is not limited to, the payment of or furnishing of benefits.

"(F) 'Benefits' includes, but not limited to:

"(1) Money, or the promise to pay money, from the state insurance fund, or from an employer who has elected and qualified under the provisions of Section 4123.35 of the Revised Code to pay directly such compensation;

"(2) The payment for or furnishing of any:

"(a) Hospital, medical, or nursing services;

"(b) Medicine, threapeutic or orthopedic device occasioned by reason of injury or occupational disease."

(As effective November 2, 1959)

If the commission has allowed only the payment of medical expenses and the payment of temporary total disability for a definite period, then

The November 2, 1959 changes in Sections 4123.01 and 4123.519, *supra*, were made by Amended Substitute House Bill No. 470 of the 103rd General Assembly (128 Ohio Laws, 743). I believe that these changes relate to the remedy within the purview of Section 1.20, *supra*. (See *State, ex rel. Slaughter v. Industrial Commission*, 132 Ohio St., 537; *State, ex rel. Serafin v. Industrial Commission*, 113 Ohio App., 405). Thus, such changes affected pending proceedings as of November 2, 1959, only if the bill contained a provision stating that the new law would apply to pending proceedings.

Immediately prior to November 2, 1959, Section 4123.519, Revised Code, contained a provision reading:

“The provisions of this section shall apply to all decisions of the commission which are made on and after the date on which this act becomes effective.”

This provision had been inserted in the section as a part of Amended Substitute House Bill No. 700 of the 101st General Assembly, effective October 5, 1955 (126 Ohio Laws, 1019, 1027). Thus, the date referred to was October 5, 1955. The section was amended in 1957 (127 Ohio Laws, 898, 900), but no change in this provision was made.

In 1959, Amended Substitute House Bill No. 470, *supra*, effective November 2, 1959, changed said provision by inserting new language. As so changed, the language reads:

“The provisions of this section shall apply to all decisions of the commission, the administrator or a regional board of review on the effective date of this act.”

I have found no other provision of Substitute House Bill No. 470, *supra*, which could be considered to express an intention to make any November 2, 1959 changes applicable to pending actions, and I must confess some question as to whether the above-noted language, taken literally, expresses such an intent.

The only changes in language were the insertion of the words “the administrator or a regional board of review” and the change from “which are made on and after the date on which this act becomes effective” to “on the effective date of this act.” While the resulting language is, therefore, not clear as to whether the intent was to apply the new language of the section to pending proceedings, I am of the opinion that the intent

was to make the new provisions of the section applicable to all decisions of the commission made on or after the effective date of the bill (November 2, 1959). If such were not the case, then there would have been no reason to insert the words "the administrator or a regional board of review" in the section, since such language would have been meaningless if it did not apply to pending cases. And my conclusion is further strengthened by the language of Bryant, J., in the case of *State, ex rel. Serafin v. The Industrial Commission*, 113 Ohio App., 405, at 415, reading:

"It is our opinions that the provisions added by the 1959 amendments, as well as those applicable parts previously in what we have referred to as paragraphs ten, eleven and twelve of Section 4123.519, *supra*, are remedial in their nature, that they were in full force and effect when on March 31, 1960, the Industrial Commission passed upon the appeal of relatrix from the administrator's order of June 3, 1959, that the commission should have given effect to them and that the commission should have reversed the order of the administrator."

Thus, in a case pending on November 2, 1959, where the order of the commission was issued after that date, payments of compensation for subsequent periods of total disability should be made during the pendency of the appeal.

Remaining to be determined is whether medical expenses may be paid during the pendency of the appeal in a case which was pending before the commission on November 2, 1959, and the order issued after that date.

I have found no specific provision of Amended Substitute House Bill No. 470, *supra*, making the November 2, 1959 changes in Section 4123.01, Revised Code, applicable to pending proceedings. (As I noted earlier, the provision including payment for medical expenses within the term "compensation" was enacted as division (F) (2) (b) of Section 4123.01, effective November 2, 1959.) I am of the opinion, however, that in making the provisions of Section 4123.519, as effective November 2, 1959, applicable to proceedings pending before the commission on that date, the legislature did intend to make the provision as to medical payments equally applicable.

To further explain, one of the provisions of said Section 4123.519 which undoubtedly applies to proceedings pending as of November 2, 1959, is the one reading:

“An appeal from a decision of the commission in which an award of compensation has been made shall not stay the payment of compensation under such award * * * during the pendency of the appeal.”

In providing that such provision should apply to decisions of the commission made on or after the effective date of the bill, November 2, 1959, the legislature must have intended that “compensation” as allowed as of that date should be paid during the pendency of the appeal. And as of that date, “compensation” includes payments for medical expenses.

Thus, in a case pending on November 2, 1959, where not the order of the commission was issued after that date, said order allowing the claim, the payment of compensation for temporary total disability for a definite period and the payment of medical expenses, payments of compensation for subsequent periods of total disability and for medical expenses should be made during the pendency of the appeal.

As to the question raised by part “(C)” of question “(3)”, under the language prior to November 2, 1959, payment was limited to payment of compensation *under the award*, and under the language as of that date payment is limited to payment of compensation *under the award* and for subsequent periods of *total disability* during the pendency of the appeal. Thus, I can see no authority to pay for temporary partial, etc., disability during the pendency of the appeal.

In line with my above reasoning, the payment of compensation for subsequent periods of total disability should be paid during the pendency of the appeal.

Your fourth question concerns a case where both the claim and the order of the commission occurred prior to November 2, 1959. In that case, the order of the commission was obviously issued pursuant to the old law. The question concerns the effect of the new law on that order.

You do not state when the order of the commission was appealed to the court of common pleas. If appealed previous to November 2, 1959, then the new law clearly applies to the pending action. In this regard, Section 4123.519, *supra*, reads in part:

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“Any action pending in common pleas court or any other court on the effective date of this act under section 4123.519 of the Revised Code shall be governed by the terms of this act.”

In such a case, payment for medical expenses and for subsequent periods of total disability should be made during the pendency of the appeal. There would not, however, be any authority for payment of other types of disability during the pendency of the appeal.

If the order of the commission was given previous to November 2, 1959, and appeal was not made to the court of common pleas by that date, the action could not be considered as pending in any court and the new law would not apply to the action. In such a case there would be authority to pay only compensation *under the award* during the pendency of the appeal.

In conclusion, it is my opinion and you are advised:

1. Where pursuant to Section 4123.516, Revised Code, a claimant appeals a decision of the administrator of the bureau of workmen's compensation to the industrial commission, and pursuant to Section 4123.518, Revised Code, the commission states its decision and any award, and the employer appeals said decision of the commission to the court of common pleas under Section 4123.519, Revised Code, such decision of the commission is an "award of compensation" within the purview of Section 4123.519, Revised Code, and the claimant is entitled to payment of compensation under such award and payment for subsequent periods of total disability during the pendency of the appeal.

2. In a claim for an injury that occurred on or after November 2, 1959, where the commission on appeal to it has ordered the allowance of the claim, the payment of compensation for temporary total disability for a definite period, and the payment of medical expenses, and the employer appeals the order to the court of common pleas, such payments should, pursuant to Section 4123.519, Revised Code, be made during the pendency of the appeal; but there is no authority for the payment of types of disability other than total disability during such pendency.

3. The provision of Section 4123.519, Revised Code, that an appeal from a decision of the commission in which an award of compensation has been made does not stay the payment of compensation under the award or the payment of compensation for subsequent periods of total disability during the pendency of the appeal, applies to an action in which the claim was filed prior to November 2, 1959 and the commission, on appeal to it, allowed the claim after that date; and where the decision of the commission allowed the payment of medical expenses as part of the compensation, such expenses should be paid during the pendency of the appeal in such an action.

4. Where a claim for compensation, and the order of the commission on appeal to it, allowing the claim, were made prior to November 2, 1959, and as of that date an appeal was pending in any court, Sections 4123.01 and 4123.519, Revised Code, as effective on that date, apply to the action; but of on that date no appeal on the question was pending in any court, said sections as effective immediately prior to November 2, 1959, apply to the action.

Respectfully,
MARK McELROY
Attorney General