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CHAPTER 11.

 OCCUPATIONAL DISEASES

**SECTION 42‑11‑10.** “Occupational disease” defined.

(A) “Occupational disease” means a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged. A disease is considered an occupational disease only if caused by a hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of continuous exposure to the normal working conditions of that particular trade, process, occupation, or employment. In a claim for an occupational disease, the employee shall establish that the occupational disease arose directly and naturally from exposure in this State to the hazards peculiar to the particular employment by a preponderance of the evidence.

(B) No disease shall be considered an occupational disease when it:

(1) does not result directly and naturally from exposure in this State to the hazards peculiar to the particular employment;

(2) results from exposure to outside climatic conditions;

(3) is a contagious disease resulting from exposure to fellow employees or from a hazard to which the workman would have been equally exposed outside of his employment;

(4) is one of the ordinary diseases of life to which the general public is equally exposed, unless such disease follows as a complication and a natural incident of an occupational disease or unless there is continuous exposure peculiar to the occupation itself which makes such disease a hazard inherent in such occupation;

(5) is any disease of the cardiac, pulmonary, or circulatory system not resulting directly from abnormal external gaseous pressure exerted upon the body or the natural entrance into the body through the skin or natural orifices thereof of foreign organic or inorganic matter under circumstances peculiar to the employment and the processes utilized therein; or

(6) is any chronic disease of the skeletal joints.

(C) As used in this section, “medical evidence” means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

(D) No compensation shall be payable for any occupational disease unless the employee suffers a disability as described in Section 42‑9‑10, 42‑9‑20, or 42‑9‑30.

**SECTION 42‑11‑20.** “Disablement” and “disability” defined.

As used in this chapter, “disablement” means the event of an employee’s becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease, “partial disability” means the physical inability to continue work in such occupation only and “total disability” means the physical inability to perform work in any occupation. The disablement and disability of an employee from an occupational disease shall be determined as provided in this chapter.

**SECTION 42‑11‑30.** Presumptions; heart or respiratory disease as to firefighters; cardiac‑related incident as to law enforcement officers.

(A) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers’ Compensation Law, any impairment or injury to the health of a firefighter caused by heart disease or respiratory disease resulting in total or partial disability or death is presumed to have arisen out of and in the course of employment, unless the contrary is shown by competent evidence, if the firefighter is at the time of such impairment or injury a bona fide member of a municipal, county, state, port authority, or fire control district fire department in this State. In order to be entitled to the presumption provided for in this section, any person becoming a member of a fire department after May 29, 1968, must be under the age of thirty‑seven years and must have successfully passed a physical examination by a competent physician upon entering into such service, a written report of which must have been made and filed with the fire department, which examination failed to reveal any evidence of such condition or conditions, and the condition or conditions developed while actively engaged in fighting a fire or within twenty‑four hours from the date of last service in the activity.

(B) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers’ Compensation Law, a cardiac‑related incident resulting in impairment or injury to a law enforcement officer resulting in total or partial disability, or death, is presumed to have arisen out of and in the course of employment if this impairment or injury developed while actively engaged in, or within twenty‑four hours from the date of, a law enforcement incident involving unusual or extraordinary physical exertion, unless the contrary is shown by competent evidence. At the time of the incident, the law enforcement officer must be employed as a law enforcement officer of a municipal, county, state, port authority, or other law enforcement agency in this State. In order to be entitled to the presumption provided by this section, any person becoming a law enforcement officer on or after the effective date of this section must be under thirty‑seven years of age and upon entering into the service, must have successfully passed a physical examination which includes a risk factor assessment for coronary artery disease conducted by a competent physician who should counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor assessment. A written report of the examination must have been made and filed with the law enforcement agency, which examination must not have revealed evidence of cardiac impairment or injury. If the law enforcement officer is identified as being a high risk for coronary artery disease during the risk factor assessment and the law enforcement officer fails to undergo, at his own expense, additional medical tests related to discovery of coronary artery disease, he is not entitled to the presumption provided by this section.

**SECTION 42‑11‑40.** Occupational diseases shall be treated as injuries by accident.

When employer and employee are subject to the provisions of this Title, the disablement or death of an employee resulting from an occupational disease shall be treated as an injury by accident and the employee, or in case of death his dependents, shall be entitled to compensation as for an injury under this Title, except as otherwise provided in this chapter; and the practice and procedure prescribed in this Title shall apply to all proceedings under this chapter, except as otherwise provided in this chapter. In no case shall an employer be liable for compensation for an occupational disease unless such disease was contracted by the employee while in the employ of the employer as a direct result of the employment.

**SECTION 42‑11‑50.** Limitation on compensation payable to employee disabled by both injury and occupational disease.

When an employee suffers disability from an occupational disease and also from an injury which is otherwise compensable under this Title, he shall not be entitled to receive compensation for both and benefits payable shall be limited to the cause which results in the longest period of disability, either as provided under this chapter or as provided for an injury by accident arising out of and in the course of employment. In no event shall compensation payable for disability or death exceed the maximum benefits provided under this Title.

**SECTION 42‑11‑60.** Requirements for compensation for pulmonary diseases.

No compensation shall be payable for any pulmonary disease arising out of the inhalation of organic or inorganic dust or fumes unless the claimant suffers disability as described in Section 42‑9‑10 or Section 42‑9‑20 and shall not be compensable under Section 42‑9‑30; provided, however, in claims based on byssinosis the claimant must have been exposed to dust in his employment for a period of at least seven years.

**SECTION 42‑11‑70.** Time in which disease must have been contracted.

Neither an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, except that due to exposure to ionizing radiation, unless such disease was contracted within one year after the last exposure to the hazard peculiar to his employment which caused the disease, save that in the case of a pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years.

**SECTION 42‑11‑80.** Wilful misrepresentation by employee as to absence of disease; waivers.

If an employee, at the time of his employment, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of disability or death, no compensation shall be payable. If an employee who has previously suffered from an occupational disease desires to continue in an employment to which such a disease is a hazard, he may waive his right to receive further benefits for disablement or disability from such disease by written agreement approved by the Commission in accordance with such rules as it may promulgate.

**SECTION 42‑11‑90.** Amount of compensation when noncompensable cause or disease affects occupational disease.

When an occupational disease prolongs, accelerates or aggravates or is prolonged, accelerated or aggravated by any other cause or infirmity not otherwise compensable, the compensation payable for disability or death shall be limited to the disability which would have resulted solely from the occupational disease if there were no other such cause or infirmity and shall be computed by the proportion which the disability from occupational disease bears to the entire disability.

**SECTION 42‑11‑100.** Amount of compensation payable for disability; exceptions.

Compensation payable for disability from an occupational disease must be the same as that provided for an injury under this title. No compensation is payable:

(1) For the degree of disability resulting from noncompensable causes or the employee’s refusal to use a safety appliance provided by and regularly required to be used by the employer or to obey a safety rule or regulation adopted and regularly enforced by the employer.

(2) For any disability resulting from the employee’s intoxication or wilful intent to injure himself.

(3) For the time the employee refuses to accept suitable employment when ordered to do so by the Commission.

(4) After the disability terminates.

**SECTION 42‑11‑110.** No presumptions; misconception of remedy.

There shall be no presumption that disablement from any cause or infirmity is the result of a occupational disease, nor that an occupational disease will result in disablement or disability. But when disability results from a disease which is compensable under other provisions of this Title, although not an occupational disease, the employee shall not be deprived of any benefits to which he may be entitled because he may have misconceived his remedy to be for an occupational disease.

**SECTION 42‑11‑120.** Procedure for determining claims; reference of medical question to medical board.

The procedure for determining claims for benefits from an occupational disease shall be the same as that followed in determining other claims under this Title, save that if any medical question shall be in controversy the Commission may, upon its own motion, and shall, upon motion of either party to the proceeding, refer the question to the medical board as provided in this chapter for investigation and report. A medical question shall be deemed to include any issue concerning the existence, cause and duration of a disease or disability, the date of disablement, the degree of disability and the proportion thereof attributable to a noncompensable cause and any other matter necessarily pertinent thereto requiring the opinion of experts.

**SECTION 42‑11‑130.** Membership of medical board.

The medical board employed to determine controverted medical questions shall consist of three members appointed by the Commission or hearing commissioner and selected from the medical advisory panel as follows: One to be named by the claimant and one to be named by the employer or his insurer as the case may be, and the third to be chosen by the Commission or hearing commissioner. But if within ten days after the hearing in which a controverted medical question is raised one or more of the parties have failed to nominate a member, the Commission or commissioner hearing the case shall nominate a member or members to complete the board to three members.

**SECTION 42‑11‑140.** Fees and expenses of medical board.

The fees and expenses of the medical board shall be charged in accordance with a schedule adopted by the Commission upon the advice and recommendations of the medical advisory panel and such fees and expenses, along with such clinical and X‑ray expenses as the medical board may require in order to properly complete its investigation in a particular case, shall be chargeable as cost to the losing party in the controversy, save that when the claimant is the losing party such fees, costs and expenses shall be borne by the Commission.

**SECTION 42‑11‑150.** Procedure before medical board.

The medical board, upon referral to it of a medical question, shall notify the claimant and the employer or its insurer, as the case may be, to appear before the board at a time and place stated in the notice and shall examine the employee, if living, and may examine the body of the employee, if deceased. The medical board shall consider any testimony given before the Commission pertaining to the medical question and necessary to a proper determination thereof. The medical board shall, as soon as practical after it has completed its consideration of the case, report in writing its findings and conclusions on every medical question in controversy. Such report shall be a part of the record in the case and shall include a statement indicating the physician or physicians, if any, who appeared before it, the medical board, what, if any, medical reports and X‑rays were considered by it and any other matters which it deems necessary to explain or substantiate its conclusions. The Commission upon receipt of the report shall send a copy thereof to the claimant and to the employer and his insurance carrier, if any.

**SECTION 42‑11‑160.** Decisions on questions by medical board.

The decisions and award in the case shall conform to the findings and conclusions in such report insofar as it is restricted to medical questions, except that either party may, within ten days after receipt of a copy of the report, file written objection thereto with the Commission; provided, the report shall not be binding on the Commission if it be proven that the conclusion of the board upon a medical question be erroneous, due to fraud, undue influence, or mistake of law or material fact.

**SECTION 42‑11‑170.** Membership of medical advisory panel.

The medical board shall be chosen from the medical advisory panel, composed of medical experts appointed by the Governor who shall be chosen from a list submitted by the executive committee of the South Carolina Medical Association, which list shall be approved by the Industrial Commission. The medical advisory panel shall include at least three doctors of medicine with no less than five years’ specialization in the field of X‑ray diagnosis and treatment, at least three doctors of medicine with no less than five years’ specialization in pathology, at least three doctors of medicine with no less than five years’ experience in the treatment and diagnosis of occupational diseases or who are specially qualified by training and experience as experts in the diagnosis and treatment of diseases in general and two doctors who are qualified for the treatment of pulmonary diseases. Members of the medical advisory panel shall serve for a term of two years and the Governor may from time to time fill vacancies in the membership thereof from its lists submitted to him as provided in this section.

**SECTION 42‑11‑180.** Compensation of members of medical advisory panel.

Members of the medical advisory panel shall receive no compensation save that provided when they serve on a medical board. But when the panel is convened to give its advice and recommendations to the Commission, the members participating therein shall receive per diem allowances plus their reasonable maintenance and travel expenses to be paid by the Commission.

**SECTION 42‑11‑185.** Medical examination in lieu of medical panel for occupationally related disease claims.

Notwithstanding the provisions of Section 42‑11‑120, in lieu of a medical panel in claims involving occupationally related diseases, at the election of either party or the hearing commissioner, the claimant shall be referred to a medical doctor or doctors who diagnose or treat occupational diseases and who are employed by or associated with one of the medical universities in South Carolina. The findings and testimony of such doctors shall be deemed advisory to, but not binding upon the hearing commissioner. Fees and expenses of such medical examinations shall be paid by the commission unless the claimant prevails in the controversy in which case such fees and expenses will be charged to the losing party.

**SECTION 42‑11‑190.** Promulgation of rules, regulations and schedules.

The Commission may, upon the advice and recommendations of the medical advisory panel:

(1) Make reasonable regulations regarding the conduct of hearings and investigations by medical boards and the fees and expenses to be allowed members of the panel for serving on such boards from time to time.

(2) Adopt a schedule of occupational diseases which shall include also a schedule of the processes or occupations giving rise to such diseases under the definitions given in Section 42‑11‑10.

**SECTION 42‑11‑200.** Rejection of chapter.

Either employer or employee may reject the provisions of this chapter under the same terms and conditions as he may reject the other provisions of this Title.