

RECEIVED

MAY 22 2013

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Lisa Gilliard on behalf of Marvin Gilliard,
Deceased,

CASE NO.: 2012-CP-23-1088
(W.C.C. FILE No.: 0627382)

Claimant/Appellant,

v.

City of Greenville, Employer and Self-
Insured, and Hewitt, Coleman &
Associates, Inc., TPA,

Defendants/Respondents.

ORDER

2013 APR 23 P 4:47
FILED IN THE CLERK'S OFFICE
OF THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE, SOUTH CAROLINA

This case came before the Court for oral argument on March 4, 2013 pursuant to Notice of Appeal filed by Lisa Gilliard Claimant/Appellant, from the unanimous decision by the Appellate Panel of the South Carolina Workers' Compensation Commission. Attorneys for the respective parties submitted Briefs, which together with arguments made by counsel have been under consideration by the Court.

This is an appeal by the Claimant/Appellant from an Order by the Appellate Panel of the Full Commission which held that Marvin Gilliard did not sustain an occupational disease, nor an injury by accident arising out of and in the course of his employment with the City of Greenville.

In the Notice of Appeal, Claimant/Appellant failed to set forth the grounds of the appeal or the alleged errors of law as required by Section 42-17-60 of the South Carolina

1
EL

ENTERED COMPUTER

Workers Compensation Act. From a review of Claimant/Appellant's Memorandum in Support, it appears Claimant/Appellant contends that sufficient evidence was presented to support a finding that Marvin Gilliard did sustain an occupational disease arising out of and in the course of his employment with the City of Greenville.

ANALYSIS

The South Carolina Administrative Procedures Act, S.C. Code Ann. §1-23-310, et seq., establishes the "substantial evidence" rule as the standard for judicial review of a decision of an administrative agency. Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (Ct. App. 2002); Gray v. Club Group, Ltd., 339 S.C. 173 528 S.E.2d 435 (Ct. App. 2000); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650 (Ct. App. 1998). In an appeal from the Commission, the circuit court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E.2d 599 (Ct. App. 1999); Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(A)(6)(d) (Supp. 2008); see also Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002) (stating court may reverse or modify Commission's decision if substantial rights of appellant have been prejudiced because administrative findings, inferences, conclusions or decisions are affected by other error of law). This court's review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Gibson v. Spartanburg Sch. Dist. No. 3, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000); see also Lyles v. Quantum Chem. Co. (Emery), 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993)

(in reviewing decision of Workers' Compensation Commission, Court of Appeals will not set aside its findings unless they are not supported by substantial evidence or they are controlled by error of law).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached in order to justify its action. Etheredge, 349 S.C. at 456, 562 S.E.2d at 684-82; Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634 (Ct. App. 1999). The Commission is the ultimate fact finder in Workers' Compensation cases. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000); Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995); Gibson, 338 S.C. at 517, 526 S.E.2d at 729. The findings of a Commission are presumed correct and will be set aside only if unsupported by substantial evidence. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001); Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E.2d 532 (1999). It is not within the province of the circuit court to reverse findings of the Commission which are supported by substantial evidence. Broughton, 336 S.C. at 496, 520 S.E.2d at 634 (Ct. App. 1999).

The perceived exceptions raised by Claimant/Appellant in her Brief as well as in oral argument before the Court involve questions of fact which are to be decided by the Commission as the ultimate fact finders. This Court shall not substitute its judgment for that of the Workers' Compensation Commission with respect to the weight of the evidence

when deciding questions of fact.

This Court specifically finds there exists substantial evidence in the record to support the very specific and detailed thirty-four separate Findings of Fact of the South Carolina Workers' Compensation Commission. This Court further finds that the decision by the Appellate Panel of the Full Commission is not affected by any error of law and therefore should be affirmed in its entirety. In reaching this decision, this Court has considered the grounds for appeal set forth in Claimant/Appellant's Brief, as well as those arguments made by counsel for Claimant/Appellant during oral argument before this Court.

CONCLUSIONS OF LAW

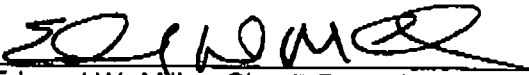
Based upon the foregoing, this Court makes the following Conclusions of Law:

1. This matter is properly on appeal to this Court and this Court has jurisdiction to determine the issues raised in the appeal.
2. The findings of fact and conclusions of law set forth in the unanimous decision of the Appellate Panel of the South Carolina Workers' Compensation Commission are supported by the reliable, probative and substantial evidence of the record, and are not affected by any error of law.
3. The findings of fact and conclusions of law set forth in the Appellate Panel Decision and Order filed January 13, 2012 are legally and sufficiently detailed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission filed January 13, 2012 be, and the same is, hereby affirmed in its entirety.

IT IS FURTHER ORDERED that the appeal by Claimant/Appellant is denied.

AND IT IS SO ORDERED.


Edward W. Miller, Circuit Court Judge
Thirteenth Judicial Circuit

Dated: 4/23/13

RECEIVED

MAY 22 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2301088

Lisa Gilliard vs. Greenville City Of

2013 MAY 23 12:44 PM
CLERK OF COURT
COURT OF COMMON PLEAS
GREENVILLE, SC

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC; Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed; Reversed; Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order on Appeal in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to dajones@greenvillecounty.org.

If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

Joseph A. Mooneyham Mooneyham Berry & Pope,
LLC P.O. Box 8359 Greenville, SC 29604
Kelly Pope PO Box 8359 Greenville, SC 29604

Michael Allen Farry 307 Pettigru St Greenville, SC
29601
David Alan Wilson 200 Whitsett St. Suite 100-B
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court