

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

Appellate Case No: 2012-205569

Loretta Springs..... Petitioner,

v.

Clemson University and State Accident Fund,..... Respondents.

RETURN TO PETITION
FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. **Did the Court of Appeals err in failing to address and follow the precedent and established law found in *Anderson v. Baptist Medical Center*, 343 S.C. 487, 541 S.E. 2d 526 (2001)?**
2. **Did the Workers' Compensation Commission misapply South Carolina law when it found the Appellant's mental condition was aggravated by the work injury but still found it not compensable because it was "more related" to childhood abuse?**

STATEMENT OF THE CASE

This case originated when the Petitioner, Loretta Springs (hereinafter "Springs"), suffered work related injuries from an accident occurring on October 12, 2007 when she fell from a golf cart hitting her head and injuring her neck, back, and hip. Springs contended she sustained a physical brain injury in addition to injuries to her head, her back, her coccyx, her left lower extremity related to nerve damage, her ears, her nose, her tongue, her olfactory nerve, anxiety, depression, and psychological overlay. Springs asked for lifetime benefits as a result of physical brain damage or, in the alternative, asked to be determined permanently and totally disabled based on a combination of her head and back injuries, with continuing medical treatment for the remainder of her life.

The Employer, Clemson University (hereinafter "Clemson"), and Carrier, State Accident Fund (hereinafter jointly referred to as "Respondents") admitted an injury to Springs' coccyx, hip, and head. The Respondents contended Springs reached maximum medical improvement in regard to her work related injuries on October 11, 2010 and relied on the medial impairment ratings of Dr. Jerry Sherrill and Dr. Carol Burnette. The Respondents maintained the Claimant suffered a minor closed head injury (concussion) which subsequently healed. The Respondents specifically denied physical brain damage. The Respondents contended Springs' current psychological condition, including memory

loss, and need for counseling is related to her past post-traumatic stress disorder (hereinafter "PTSD") as a result of childhood abuse resulting in dissociative identity disorder (multiple personalities). Further, the Respondents denied the extent of Springs' injuries including those to Springs' back, specifically the bulging disks, and the causal relationship between Springs' loss of taste and smell.

A hearing was held before Commissioner Avery B. Wilkerson of the South Carolina Worker's Compensation Commission (hereinafter "Commission"). At the hearing Springs focused much of her attention to the physical brain damage component of the case. Commissioner Wilkerson took evidence on the claim and subsequently issued a Decision and Order dated April 11, 2011. Commissioner Wilkerson found that Springs had reached maximum medical improvement in regard to her work related injuries, had suffered a partial permanent disability to her back and coccyx, had sustained a minor closed head injury which subsequently healed, had not suffered physical brain damage, that the aggravation to Springs' PTSD was not disabling, that Springs' current memory problems and psychological conditions were related to her childhood abuse and not the result of her work injury, and that Springs was in need of such additional medical care and treatment which would tend to lessen her period of disability.

Both parties timely filed Requests for Review by the Appellate Panel of the Commission asserting numerous errors on the part of Commissioner Wilkerson. On the review before the Appellate Panel, Springs again focused on the argument that she had suffered physical brain damage and was entitled to lifetime benefits. The Appellate Panel issued a unanimous decision dated November 16, 2011 affirming the Single Commissioner's Decision and Order in its entirety. Pursuant to the Commission's

Decision and Order, Springs was awarded ten (10) weeks of permanent disability to her coccyx and 15 weeks of permanent disability to her back, totaling 25 weeks of disability. Springs was found to have sustained a minor closed head injury which subsequently healed, and it was determined that she had not suffered permanent physical brain damage as contemplated under S.C. CODE ANN. § 42-9-10. It was further determined Springs suffers from at least five (5) different personalities as a result of her dissociative identity disorder stemming from post-traumatic stress disorder from childhood abuse. The Commission found that Springs' memory problems and her other psychological conditions were more related to her childhood abuse and, accordingly, she was not entitled to any permanent disability for the closed head injury. Springs was awarded such additional medical care and treatment which would tend to lessen her period of disability. Since the counseling by Dr. Kriegel for Springs' pain coping skills and her PTSD were so intertwined, this included counseling by Dr. Kriegel. The Commission also determined that the Respondents would be responsible for Springs' referral to vocational rehabilitation.

Springs appealed the Commission's Decision and Order to the South Carolina Court of Appeals. At this point, Springs abandoned her argument related to physical brain damage and concentrated her argument on the findings and conclusions that (1) Springs' mental condition was not compensable as a result of an aggravation of a pre-existing condition and (2) Springs was not totally and permanently disabled as a result of her work related injury. By a unanimous opinion, the South Carolina Court of Appeals affirmed the Commission's Order finding that there was substantial evidence to support

the Commission's Order. Springs thereafter petitioned the South Carolina Court of Appeals for a rehearing, which was denied. Springs now seeks a Writ of Certiorari.

ARGUMENTS

I. In accordance with South Carolina law, the South Carolina Court of Appeals correctly affirmed the South Carolina Workers' Compensation Commission's Decision and Order denying compensability of Springs' PTSD, memory problems, and other psychological conditions.

Neither the Commission nor the South Carolina Court of Appeals adopted a "new standard" in reaching their respective decisions. Springs' reference to the "more related" language stated in the Commission's Order is taken out of context, given misplaced emphasis, and is not the basis of the Findings of Fact, Conclusions of Law, or the Decision and Award reached by the Commission. The Commission's Order is not in conflict with prior case law and is consistent with the decision of *Anderson v. Baptist Medical Center*, 343 S.C. 48, 541 S.E. 2d 526 (2001).

Further, *Certiorari* should not be granted in the present situation because there is no novel question of law. Springs fully briefed and argued her position related to the decision of *Anderson vs. Baptist Medical Center*, 343 S.C. 48, 541 S.E. 2d 526 (2001) before the South Carolina Court of Appeals. The Commission's Decision and Order, when read in its entirety, is supported by the substantial evidence in the record and consistent with prior South Carolina case law. Accordingly, Springs Writ of Certiorari should be denied.

In Worker's Compensation cases, the burden is on the Claimant to prove the facts which will render an injury compensable and an award should not be based on surmise, conjecture, or speculation. *Tiller v. National Health Care Ctr. Of Sumter*, 334 S.C. 333, 513 S.E.2d 843 (1999), *Mims v. Nehi Bottling Co.*, 218 S.C. 513, 63 S.E.2d 305 (1951).

The Court must affirm the findings of fact made by the Commission if they are supported by substantial evidence, which is such evidence that when, in considering the record as a whole, allows reasonable minds to reach the same conclusion the Commission reached. *Bartley v. Allendale Cty. School Dist.*, 392 S.C. 300, 306, 709 S.E.2d 619, 622 (2011). Thus, absent an error of law, a reviewing court is limited in its scope of review in Workers' Compensation cases to making a determination as to whether or not there is substantial evidence to support the factual findings of the Commission. *Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 405 S.E.2d 408 (1991).

1. The South Carolina Workers' Compensation Commission and the South Carolina Court of Appeals followed precedent and established case law including *Anderson v. Baptist Medical Center*, 343 S.C. 387, 541 S.E.2d 526 (2001).

The Respondents do not dispute that pursuant to *Anderson v. Baptist Medical Center*, 541 S.E.2d 526 (2001) and the supporting statutory law and case law, mental injuries are compensable if they are induced either by physical injury or by unusual or extraordinary conditions of employment. The case law supports the right of a Claimant to compensation for aggravation of a pre-existing condition where there is a dormant condition which has produced no disability but which, thereafter, becomes disabling by reason of the aggravating injury. *Anderson* is distinguishable from the present case in that the Court in *Anderson* found the pre-existing psychological condition to be compensable because the only substantial evidence in the record clearly showed her condition was aggravated by the work related fall. As set forth below, the substantial evidence in the present case supports the findings of fact and conclusions of law reached

by the Commission that any aggravation of Springs' PTSD was not disabling and, therefore, not compensable.

Similarly, the case of *Bartley v. Allendale Co. School District*, 392 S.C. 300, 709 S.E.2d 619 (2011), which was cited by the South Carolina Court of Appeals in its opinion, holds that the question to be considered regarding a pre-existing condition is whether the combined effects of the pre-existing condition and the work place injury result in a greater disability than would have otherwise existed. What separates the present case from *Bartley* is that the Commission in this case determined that the substantial evidence in the record supports the fact that the Claimant's current psychological condition is related to her PTSD from childhood abuse, and that while the accident may have aggravated her pre-existing PTSD, it is not disabling. As previously argued by the Respondents before the South Carolina Court of Appeals, there is substantial evidence in the record to support the Findings and Conclusions of the Commission and there is no error of law.

Springs cites several findings of fact upon which she relies to establish compensability by way of an aggravation of a pre-existing condition. Springs, however, fails to cite the additional findings of fact and evidence in the Commission's Order which support the denial of compensability. For instance, Springs received extensive medical treatment from a neurologist and two (2) neuropsychologists for approximately two and one-half (2½) years following the accident with no mention of PTSD. Similarly, there is no mention of any aggravation of a pre-existing condition in any of their records. Dr. Jerry Sherrill, the treating neurologist, treated Springs for both her back and memory issues. As stated in Finding of Fact 16, in April 2009 Dr. Sherrill stated that Springs had

no restrictions neurologically to keep her from working. (R., p. 27). Dr. Sherrill concluded on March 26, 2010 that Springs was able to return to work with no restrictions and would not need further medical treatment for her work injury. (R., p. 317).

Dr. Sheldon Herring, a licensed psychologist, clinical neuropsychologist, and Clinical Director of the Roger C. Peace Rehabilitation Hospital conducted an extensive neuropsychological evaluation in September 2009 finding Springs to have an overall normal cognitive profile with improvement from prior 2008 testing. (R., pp. 256-261). The Commission stated in Finding of Fact 23 that Dr. Herring found Springs to have normal cognitive capacities and did not find her cognitive capacities to be disabling. (R., p. 28 and R., pp. 256-261).

Also not cited by Springs in her argument are other findings of fact which support the Commission's Decision and Order. The Commission found that Springs has had and suffers from some very serious problems, however, based on the greater weight of the evidence, the October 12, 2007 accident did not cause all of the problems Springs is experiencing. (R., p. 26). This sentence, when read with the remainder of Finding of Fact No. 7 cited by Springs in the Petition for Writ of Certiorari, is consistent with the Commission's determination that the accident was not the cause of, nor did it result in or contribute to, her current mental issues, including her PTSD and memory loss. In other words, the PTSD and multiple personalities were always there. The Claimant had always suffered memory loss and other issues. Her condition had just not been diagnosed.

Further, Springs references only part of Finding of Fact No. 5 in her argument. (R., p. 26). Springs leaves out the last part of the sentence stating that any aggravation to the pre-existing condition "is not disabling." This finding of fact, when read in its

entirety, along with the remainder of the Commission's Decision and Order is consistent with the Commission's determination that although the Appellant's PTSD may have initially been aggravated by the accident, the aggravation was of a temporary or minor nature, is not disabling, and is not the cause of her current mental issues.

The record establishes that there was conflicting testimony and evidence as to the cause, nature, and other issues surrounding the Appellant's PTSD and current mental state. The record establishes that following Spring's injury, she showed significant improvement and returned to work for a period of time. It was not until approximately two and one-half (2½) years following the accident that she was first diagnosed with PTSD as a result of early childhood abuse. Pursuant to Springs' own words, she had battled depression for many years and the reason she did not recognize it was because it had been her constant companion (R., p. 325), she had intrusive memories and nightmares most of her life (R., p. 285), and had periods of lost time and blackouts going back to high school (R., p. 105 & 117). Therefore, there is sufficient evidence in the record to establish Springs suffered from multiple personality disorder and PTSD prior to the accident, but because it had never been diagnosed, she simply did not know why she was having these problems. There is also evidence that any aggravation of her PTDS was not disabling. Thus, there is substantial evidence in the record to support the Commission's findings and conclusions that Springs' current mental condition, including her PTSD, is unrelated to the Workers' Compensation accident and that any aggravation failed to combine with and increase the degree of disability. Accordingly, her current mental condition is not compensable and there is no error of law.

2. The South Carolina Workers' Compensation Commission and the South Carolina Court of Appeals correctly applied South Carolina law when it found the Petitioner's mental condition is not compensable.

Springs contends that the Commission adopted a new standard, the "more related" standard, which she claims directly contradicts established law. While the Commission's Decision and Order did use the words "more related" in its decision, it is clear that these words were not the basis of the Commission's decision and did not create a new standard. In making this argument, Springs is taking this wording out of context, placing inappropriate emphasis on the wording, and using this wording in isolation with the remainder of the language in the Order. The record as a whole supports the Commission's decision. Following the work injury the Claimant was evaluated by a neurologist and two neuropsychologists which found her to have normal cognitive capacities which were not disabling. They returned her to work. It was not until approximately two and one half (2 1/2) years after the work injury that the Claimant's PTSD was diagnosed. This was only after Springs first began seeing Dr. Kriegel in 2009, for pain therapy. Dr. Kriegel stated that her coping skills were improving and that as a result he would begin focusing more on her memory problems. (R. p. 283) It was at this point that Springs began focusing on memories from her childhood and Dr. Kriegel concluded that her memory problems "may be more related to intrusive memories from her childhood rather than as a direct result of her head injury during the accident." (R. p. 284). Also of importance is that her prior psychological testing by Dr. Herring did not reveal any memory problems.

As reflected in the Commission's Decision and Order, the objective findings do not support Springs' subjective complaints, and the evidence establishes that her current mental and memory problems are unrelated to the Workers' Compensation injury. Furthermore, there is no medical opinion by Dr. Kriegel or any other physician that Springs is permanently and totally disabled as a result of a combination of her mental problems and her work injury. There is no vocational expert opinion providing such an opinion. The testing of Dr. Herring shows that Springs' memory and intellectual skills are in the average range. In fact, Dr. Herring's report from October, 2009 indicated that it is only due to Springs' physical work restrictions that she should consider alternative work. Dr. Herring specifically stated that she has the cognitive capacities to do so. (R. p. 256 – 261). Dr. Herring's extensive testing did not find Springs' condition to be disabling, and there was no diagnosis of PTSD. This opinion is supported by Dr. Sherrill's record of March, 2010 stating that Springs had an impairment rating of 0% to her back and 3% to her head, returning her to work with no restrictions, and indicating that she would not need future medical care related to her work injury. (R. p. 317).

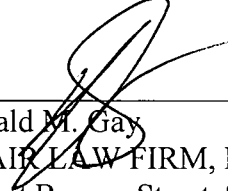
In summary, the healthcare providers found no cognitive impairment or increase in the amount of disability related to Springs' mental status or memory loss. Her healthcare providers returned her to work and found her cognitive capacities to not be disabling. Thus, the record as a whole reflects that the Claimant's current memory issues and mental status are unrelated to the Workers' Compensation case and do not result in a combined effect of her work injury and an aggravation of her pre-existing condition combining to create a greater disability. The Commission's Decision and Order is,

therefore, consistent with South Carolina statutory and case law and the Petitioner's Writ of Certiorari should be denied.

CONCLUSION

For the reasons stated, and for the reasons set forth in the Respondents' Briefs and Return to the Petition for Rehearing before the Court of Appeals, which are incorporated herein by reference, the Respondents respectfully request this Court to deny the Petition for a Writ of Certiorari.

Respectfully Submitted,



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May 27, 2013

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PROOF OF SERVICE

I certify that I have served the Return to Petition for a Writ of Certiorari on Loretta Springs by depositing a copy of it in the United States Mail, postage prepaid, on May 27, 2013, addressed to her attorney of record, Paul C. Rathke, The Joel Bieber Law Firm, 201 East North Street, Greenville, South Carolina 29601.

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