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MAR 17 2023

SC Court of Appeals

THE SOUTH CAROLINA COURT OF APPEALS

Alicia Ruffin, )  
Appellant, )  
)  
)  
)  
vs. )  
)  
)  
)  
South Carolina Workers Compensation )  
Commission, )  
)  
Respondents, )  
\_\_\_\_\_ )

Appellate Case No. **RECEIVED**  
MAR 17 2023  
SC Court of Appeals  
Appeal

This is a New Appeal arises out of an order of the South Carolina Workers' Compensation Commission for the dated for February 14, 2023. Final decision has been rendered by South Carolina Workers Compensation Commission Panel of 3 Commissioners consisting of Commission Michael Campbell, Commissioner Aisha Taylor, and Commissioner Melody James, Chair, on February 14, 2023. The Appellant wish to show cause that intervention/oversight of the South Carolina Court of Appeals is warranted and ultimately necessary.

**I. STATEMENT OF THE CASE**

The Appellant suffered an admitted, work-related accident to her lumbar and cervical spine on October 4, 2018. The Defendants provide treatment for the Claimant's cervical and lumbar spine injuries and paid temporary total indemnity benefits. On November 2018, the authorized treating Physician Dr. David Mitchell prescribed the Appellant to wear a neck brace. On April 12, 2019, Dr. David Mitchell permitted PA, William Sean Irving to remove the neck brace. During the removal of the neck brace, PA Irving "jerked" the Appellant's head and neck towards the Appellant's right shoulder. Sending the Appellant to the ER. Commissioner T. Scott Beck wrongfully documented that the Appellant went to the ER on April 13, 2019. But the ER records, report "Admission date of April 12, 2019." After ER visit, Liberty Mutual treating physicians' increase medication, dosage, and amount.

The Appellant suffered an additional injury on June 19, 2019 after an EMG study conducted by Dr. Matthew Terzella. This injury all so sent the Appellant to ER. After ER visit, Liberty Mutual treating physicians' increased medications, dosage, and amount The Appellant agrees that the October 4, 2018, injuries was limited to her neck and back. But there was two injuries after the October 4, 2018 that occurred by Liberty Mutual's Authorized Treating Physician's that caused the work-related injuries to evolve to multiple Occupational Diseases. The Appellant followed the directions under

SC Code §42-15-70 *the Liability of an employer for medical treatment; effect Malpractice*, but it was Liberty Mutual's physicians that caused the injuries, and the Appellant properly and timely reported them to the Commission. None of the Authorized treating physicians provided the Commission with a 14-B Statement. After performing an IME, Dr. Charles Kanos (Southeastern Neurosurgical and Spine Institute) assigned a 3% rating to the Lumbar spine and a 3 % rating to the Cervical Spine, but also stated, the Appellate "*CANNOT RETURN TO WORK*". Dr. David Mitchell on 11-24-2018 and through treatment stated, the Appellate was "*Disabled*" and "*Fall Risk*".

Since the Liberty Mutual's physicians were making the Appellant's injuries worse and they all abandon medical care for the Appellant... Under SC Code 42-15- 60 *the employee has made reasonable attempts to obtain further treatment or modality from an authorized physician, but through no fault of the employee's own, is unable to obtain such treat or modalities*. The Appellant used Dr. David Mitchell's referral to seek care from licensed, certified Neurologist. Dr. Laura Mason diagnosed the Appellant on October 1, 2019, with CRPS (Chronic Regional Pain Syndrome), Algoneurodystrophy and Cervical Myelopathy. Also, add the Appellant was entitled to seek treatment from at least one, maybe two Certified physicians outside of Liberty Mutual's network of physicians.

At the September 16, 2020, hearing, Commissioner T. Scott Beck served as Prosecutor and Commissioner. Atty. Amanda Neely did not speak at the hearing. Order Instructions was given to Atty. Neely on what to provide the Commissioner to have the Appellant's claim dismissed. Prior to the hearing, Atty. Neely submitted evidence that violated SC Code 17-28-350 by willfully *and maliciously destroying, altering, concealing, or tampering with physical evidence or biological material...with the intent to impair the integrity of physical evidence or biological material*. The Appellant voiced these concerns to the Commission, and they were ignored. "*A Decision and Order was served on the parties on December 10, 2020, in which Commissioner Beck found that Claimant was at maximum medical improvement, awarded 15% permanent partial disability PPD to the pursuant to § 42-9-30(21), the Commission stated Claimant was not entitled to future medical treatment*. According to the Separation of Powers doctrine, it is unconstitutional for the Commissioner to execute an administrative order will acting in an executive position. But for two years South Carolina Workers Compensation Commission completed a SSA 1709 form and reported that Appellant was still receiving TTD payments. But the Appellant stopped receiving payment on 11-30-2020 per ordered by Commissioner T. Scott Beck. What is in question, who was receiving the payments in question and why was the Commission maliciously reporting for 2 years that the Appellant was still receiving payments to the SC Social Security Administration?

Then, the Appellant submitted a Motion to Reinstate. The Defendants (Liberty Mutual) at that time was represented by Atty. Mary Kate-Littlejohn. Atty. Amanda Neely was out on Maternity Leave. That leave was not report to any of the courts. The Response to the Motion was completed by Atty. Mary-Littlejohn, she also submitted evidence that

violated SC Code 17-28-350 and the Commission still allowed it on record. The full panel dismissed the Appellant's request without legal cause or precedent. On a blank date in 2020, before the Appellant submitted the Motion for Reinstatement. The South Carolina Court of Appeals denied the Appellant's request for a re-hearing **not on the Merits of the case**, but because Atty. Amanda Neely violated Section 16-9-10(A)(1) *which is Perjury and subornation of perjury*. Atty. Neely committed perjury to the SC Court of Appeals by stating that she was not properly process served. It was unknown to the Appellant at the time that as long as one attorney from the same law firm is served...all attorneys are considered as process served at the same law firm. The Appellant properly process served Atty. Mary Kate Littlejohn who was representing the interests of Liberty Mutual at that time. Atty. Amanda Neely mailed the Appellant a settlement check in C/O Mary Kate Littlejohn and Alicia Ruffin. (The check was returned to Atty. South Lewis, and he maintains the check in his office.)

On November 1, 2021, the Claimant filed a Petition for Writ of Certiorari with South Carolina Supreme Court and the Claimant's filing **was not** dismissed on the Merits of the case. But was dismissed without cause or precedent. And returned to the lower court/South Carolina Workers Compensation Commission.

Then, on February 24, 2022, there was not and pleading, Commissioner Michael Campbell attempted to **administratively dismiss** the Appellant's Form 50 request for a hearing by attempting to impose a Form 19 to have the matter closed. Then, on May 27, 2022, Commissioner McGaskill stated, *"This matter came before the Commission on May 27, 2022, on Claimant's form 50 Hearing Request, dated February 24, 2022. According to Commissioner Mc Gaskill's written order: "The issues were heard and adjudicated during a pre-trial conference. "No testimony was taken on the record" Claimant appeared. Pro se. J. South Lewis., Esquire of Willson Jones Carter & Baxley appeared on behalf of Defendants. According to the Separation of powers doctrine it is unconstitutional to serve as an administrative dismissal, while acting in an executive capacity. Therefore, on top of the fact a decision should not been rendered/adjudicated following a Pre-hearing that was conducted off record; this also violation the Separation of powers doctrine along with violating the Appellant's 14<sup>th</sup> Amendment Rights, Failure to Due Process of the law, and Rights to a Fair Trial.*

The Appellant could not Appeal what was adjudicated on August 3, 2022, because nothing should have been adjudicated under SC Code Regs § 67-611 *"The Form 58 or (pre-hearing) shall remain in the Commission's File but does not constitute evidence or become part of the record of the hearing."* Anything that was adjudicated in this pre-hearing would've and should have been deemed invalid. Commissioners along with Opposing Counsel withheld from the August 3, 2022 order was, ***"IT IS ORDERED.....This shall not prevent, however, either party from pursuing a proper appeal of this Decision and Order or pursuing a future, unrelated claim not previously adjudicated by the Commission."***

Then on August 8, 2022, Commissioner Wilkerson stated, "*this matter came before the Commission on August 8, 2022, on Claimant's Form 50 Hearing Request.* The Appellant was not notified of a hearing to be conducted. Commissioner Wilkerson plagiarized Commissioner's McCaskill's (August 3, 2022) pre-hearing statement and used his statement to attempt to have the Appellant's case closed.. "*Commissioner Wilkerson issued, and Order dated September 7, 2022, declining to hear the matter, based on the doctrine of Res Judicata.*" The Commissioner's declining to hear the matter violated the Appellant's 14<sup>th</sup> Amendment Rights and Rights to a Fair Trial and Failure to Due Process of the law.

The South Carolina Workers Compensation Commission is complicit in violating 42 U.S.C §1985(3) On December 19, 2022, a portion of the Judicial Review that was filed included procedural conduct on the part of Commissioner Beck and Commissioner Campbell and others. Commissioner Beck served earlier that morning regarding submission of evidence from the Appellant and Opposing Counsel and Commissioner Campbell rendered part of the Judicial Review Final Order. The Appellate shared clear evidence proving the misappropriation/re-direction of over \$80,000 in funds that was fraudulently report as the Appellant's. In addition to Commissioner Beck giving Liberty Mutual a credit; of \$24,098.00 for over payment. These funds were never reported to the Social Security Administration.

Please note: Commissioner Beck served on the Panel that morning and Commissioner Campbell served on the Judicial Review Final Order dated February 14, 2023; the Commissioners being so closely involved with the Judicial Review, is a serious ***Conflict of Interest and neither Commissioner recused themselves.***

On Feb. 1, 2023, Atty. Lewis presented his draft and advise the Appellant to review and to "advise if you do not feel this accurately reflects the decision of the Panel." On Feb. 2, 2023, after reading the draft; the Appellate stated, "*Respectfully, that was sent was not acceptable. There were quite a few discrepancies.*" The Appellate listed in detail discrepancies prior to February 14, 2023, order, but the list was ignored.

South Carolina Workers Compensation barred the Appellant from litigating her injuries by citing *Res Judicata*. *Res Judicata* in South Carolina consists of four elements: (1) a second action involving the same parties (or their privies) as the first; (2) a prior final, valid decision on the merits by a court of competent jurisdiction; (3) a second action arising out of the transaction or occurrence that was the subject matter of the first action; and (4) a second action raising claims that were or could have been litigated in the first action. The Appellant can prove that Opposing Counsel failed to satisfy all four elements, since it was the Opposing Counsel Atty. South Lewis bearded the burden to establish all four requires and he failed all four elements, and this was allowed by the Commission.

## **1. ASSIGNMENT OF ERROR NUMBER 1**

The Commissioners erred by not recognizing that all the same parties were not present. Commission T. Scott Beck served as an Attorney in the September 16, 2020,

hearing. What occurred was a violation of Separation of Powers doctrine. Attorneys Amanda Neely and Mary-Kate Littlejohn were not present although they were order by the South Carolina Workers Compensation Commission to appear at the Pre-hearing dated for May 27, 2022 and the Mary-Kate Littlejohn although ordered to appear was not present for the December 19, 2022 Judicial Review.

## **2. ASSIGNMENT OF ERROR NUMBER 2**

The Commissioners erred in not acknowledging that the Appellant never litigated the Merits of the case. There is no audible record of any hearing conducted between the Commission, Court of the Appeals, or the Supreme Court that demonstrates that the Appellant ever fully litigate her injuries. A dismissal based on technicalities are not deemed as dismissals based on merit. The lack of an appeal does not suddenly make the dismissal “ on merits” and therefore the Appellant right to litigate damages should not be barred by res judicata.

## **3. ASSIGNMENT OF ERROR NUMBER 3**

The Commissioners erred in that the current complaint in fact did raise new facts that did not arise out of the same “transaction or occurrence. Important facts to note; the work-related injuries has evolved to multiple Occupational Diseases that was not adjudicated on record. And the advance nature of the Occupational Diseases that can better be explained by the amount of pain medication the Appellant is being prescribed to take palliatively, since the diseases are incurable.

In *Lawlor v National Screen Service Corp.*, 349 U.S. 322 (1955), the Supreme Court unanimously reversed the application of res judicata where the lower court applied the same reasoning as the district court applied here. There, the plaintiffs brought an antitrust suit that was ultimately dismissed with prejudice. *Id.* At 324. Seven years later, the plaintiffs brought a second antitrust suit against many of the same defendants, alleging the same course of wrongful conduct, which had worsened in the interim. *Id.* At 328. The lower courts applied res judicata to bar the second suit. *Id.*

The Court held that claims in the second suit based on events that had not yet occurred at the time of the first suit were not barred: “While the [earlier] judgment precludes recovery on claims arising prior to its entry, it cannot be give the effect of extinguishing claims which did not even then exit and which could not possibly have been sued upon in the previous case.” *Id.* The Court further held that the plaintiff’s claims in the second suit survived res judicata to the extent that those claims alleged worsening of the earlier wrongful conduct: “ .....”Under these circumstances,” the explained, “whether the defendant’s conduct be regarded as a series of individual torts or as one continuing tort, the [earlier] judgement does not constitute a bar to the instant suit.” *Id.*

Along to with the wrongfully conduct of Defendants and Commission worsening, the Appellants Occupational Diseases has worsened, and medications have been drastically increased since the initial injury.

#### **4. ASSIGNMENT OF ERROR NUMBER 4**

The Commissioners erred in that the second action raising claims there were or could have been litigated in the first action. The Commission failed to render fair and impartial judgements throughout the commencement of this case. The Commission knew of the injuries that the Appellate sustained by the Liberty Mutual's physicians and they failed to protect the Appellate from harm. And after the Appellate suffered injuries they failed to properly treat those injuries leaving the Appellant to succumb to multiple Occupational Diseases. All the Commissioners did not adjudicate a decision concerning the Appellant's neck, nor the Episodic Nervous System. In addition to the Appellant's CRPS, Algoneurodystrophy, Cervical Myelopathy and due to the Liberty Mutual's physicians care or lack thereof; the Appellate suffered Major Depressive Disorder and PTSD. The Appellate reported the diseases properly and in a timely manner, but the Commission failed to include the Occupational diseases in any decision. The Appellate was unable to afford the treatment after being diagnosed by Dr. James Way and Dr. Stuart Quirk Certified Clinical psychologist for Disability Determination for Social Security Administration. Failing to document falls under the 8 U.S. Code § 1324 and is the same as Documentation Fraud.

Choosing to omit sustained injuries is not the same as adjudicating a decision. When the treating Physician for Liberty Mutual failed to place the Appellate at MMI and refused to provide the Commission with a 14-B statement and the IME doctor report was unequal to the low MMI rating, but the doctor stated that the Appellant "*CANNOT RETURN TO WORK*". It was the responsibility of the Commission to provide an MMI rating that was comparable to the "permanent *physical limitation* of the Appellant and the fact that he statements the Appellant "*CANNOT RETURN TO WORK*".

### **ISSUES ON APPEAL**

The Commission received the PLAINTIFF'S RESPONSE TO DEFENDANTS/RESPONDENTS BRIEF on November 22, 2022, within the statutory period, Claimant filed an application for review in the case setting forth the following ground *verbatim* for review:

**I. On any occasion did the Commission as a whole or any Single Commissioner fail to follow any rules, laws or regulations as it relates to South Carolina Workers' Compensation Commission?**

**(Commission Failed to Answer)**

**II. On any occasion did the Commission as a whole or any Single Commissioner display the appearance of bias or improprieties against the Claimant?**

**(Commission Failed to Answer)**

**III. Did the Defendant fail to meet the elements for Res Judicata?**

**(Commission Failed to Answer)**

The Appellant begs for relief, by means of action on the part of the Court of Appeals to intervene, provide oversight and/ or rule to have this case be heard before a higher court to render a fair decision.

Alicia M. Ruffin

Appellant