THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the South Carolina
Workers Compensation Commission
Trial Court Case No. 1423028

Cassandra D. Stallings, Employee, Respondent,

vs.

Hubbell Power Systems, Employer and Liberty Mutual Insurance Co., Carrier, Appellants.

Appellate Case No. 2021-000965

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, the Appellants respectfully petition this Court for a rehearing in the above-entitled case and submit the following memorandum in support thereof. The basis for this Petition is that the Court misapprehended the Appellate Panel Decision and Order dated August 4, 2021 and by concluding that it is supported by substantial evidence and is not affected by errors of law

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CITATION OF AUTHORITIES

Cases

Statutes

MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING

I. THE DECISION OF THE APPELLATE PANEL OF THE COMMISSION IS AFFECTED BY ERRORS OF LAW AND SHOULD BE REVERSED

In its Opinion for this case this Court cites S.C. Code Ann. § 42-1-172 (1976), which provides:

> (A) "Repetitive trauma injury" means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.
>
> (B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.
>
> (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 and qualified medical physician.
>
> (D) A "repetitive trauma injury" is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.
>
> (E) Upon reaching maximum medical improvement, the employee may be entitled to benefits pursuant to Section 42-9-10, 42-9-20, or 42-9-30. Medical benefits for compensable repetitive trauma injuries shall be as provided elsewhere in this title.
>
> S.C. Code Ann. § 42-1-172 (1976).

This Court then held that the substantial evidence contained in the record for this case supports the Appellate Panel's decision to reverse the Single Commissioner's determination that Ms. Stallings did not sustain compensable bilateral injuries to her wrists and hands while working for the Employer.

The Appellate Panel made the following two Findings of Fact on Page 4 of its Order for this case:

> 2. The Hearing Commission found the alleged date of accident in this matter is not supported or established by the medical evidence submitted by the Parties in this case, nor the testimony of the Claimant. The Full Commission Panel reverses this Finding by stating the injury is compensable bilateral repetitive trauma and they give more weight to progression of injuries over the specific dates of injury alleged.
>
> 3. The Hearing Commissioner found as a fact the medical evidence submitted by the Parties fails to Establish by a preponderance of the evidence that there is a causal connection between the work activity performed by the Claimant for the Employer and the alleged injuries she sustained to both her wrist (sic). The Full Commission Panel reverses this finding by stating the injury is compensable bilateral repetitive trauma and they give more weight to progression of injuries over the specific dates of injury alleged.
>
> (Record on Appeal, Pages 9-13).

To support the compensability of a repetitive trauma injury our Legislature requires, among other things, that the Commission make

> . . . a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.
>
> S.C. Code Ann. § 42-1-172(B) (1976).

The Appellate Panel made no such specific factual findings in this case. To the contrary the Panel in this case wrote "the injury is compensable bilateral repetitive trauma and they give more weight to progression of injuries over the specific dates of injury alleged." Indeed, the Panel does not even reference the type of work Ms. Stallings performs for the Employer or her job duties there, much less make a connection between that work and her alleged injuries..

As this Court notes the standard of review in this case is whether or not the Appellate Panel's decision is supported by substantial evidence. The Court also notes that it "must affirm the findings of fact made by the [Appellate Panel] if they are supported by substantial evidence." Hargrove v. Titan Textile Co., 360 S.C. 276, 289, 599 S.E. 2d 604, 611 (Ct. App. 2004). It is well settled in this State that the Court reviewing the [Commission's] decision should not substitute its own findings of fact for those of the [Commission] nor should the Court substitute its judgment for that of the [Commission] as to the weight of the evidence. Tobey v. L & P Construction Company, 296 S.C. 122, 370 S.E. 2d 897 (Ct. App. 1988).

In its decision affirming the Appellate Panel this Court wrote:

> Stallings presented her medical records, which showed she reported injuries to her hands and wrists from pushing and pulling machines as part of her regular duties at work. Stalling's orthopedic surgeon affirmed to "to a reasonable degree of medical certainty, bilateral carpal tunnel syndrome is caused by a repetitive trauma from a work-related injury" and "to a reasonable degree of medical certainty, . . . the left and right wrist are work-related injuries."

Respectfully, this Court made its own factual findings in this matter contrary to its duty under the established law of this State. Furthermore, the Court's findings are not supported by the medical evidence upon which it relies to makes its own findings.

In that regard Ms. Stallings' medical records show that she never reported to any medical provider that she had experienced bilateral wrist and arm problems "from pushing and pulling machines as part of her regular duties at work." The only evidence in the record for this case which comes close to providing a factual basis for this Court's independent findings is contained in the reports of Stephen Youmans, M.D., who after seeing Ms. Stallings in late 2015 and early 2016 wrote:

> Patient complains of cervical radiculitis. Mrs. Stallings presents for evaluation of pain. This pain is localized to the upper *right arm, right elbow, right wrist, and right hand.* It began 5 months ago. The onset of pain occurred with no apparent trigger. She characterizes it as throbbing. It is of moderate intensity. She estimates that the frequency of pain is several times daily. Aggravating factors include pulling and pushing on machine at work, turning her neck a certain way will shoot pain to the *right shoulder and elbow* . . . she is okay lifting, but is still having pain and swelling if she pulls and pushes on machinery at work. She works at a station that she grabs a part with the *right arm* and puts it in the holster in front of her then pulls down the gun to screw the part together. *The arm* will begin hurting into the shoulder and neck on the *right side* after doing that job for 2 days by the 3rd and 4th day it is hurting. (emphasis added by the undersigned).

Record on Appeal, Pages 25-34.

There is no mention in Dr. Youmans' records of Ms. Stallings having experienced any bilateral arm, wrist or hand problems - that is, with any part of her left upper extremity. In addition, Dr. Youmans has expressed no opinion in this case, as required by Subsection (D) of § 42-1-172, with respect to whether or not there is a direct causal relationship between her problems and the work she performs for the Employer.[1]

This Court then notes that Dr. Fulcher, Ms. Stallings' orthopedic surgeon, "affirmed to a reasonable degree of medical certainty, bilateral carpal tunnel syndrome is caused by a repetitive trauma from a work-related injury . . ." (Record on Appeal, Pages 69-70).

A close review of Dr. Fulcher's records for Ms. Stallings, however, reveals that they contain no history or information regarding the type of work or job duties Ms. Stallings performs for the Employer in this case. Thus, it's difficult to understand how this Court is able to conclude that Dr. Fulcher found a causal connection or relationship between Ms. Stallings' work duties and her

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[1] Dr. Youmans does note that Ms. Stallings expressed that her work "aggravated" her condition, indicating the presence of an underlying preexisting medical condition. The compensability of the aggravation of preexisting injuries is governed by S.C. Code Ann. § 42-9-35 (1976), which was not addressed by the Commission in this case.

alleged injuries.

Our Legislature has recognized that an alleged repetitive trauma injury is a medically complex matter and has set forth by statute, in § 42-1-172, the elements which must be proven in order to established the compensability of such an injury. The Appellate Panel in this case did not address these specific elements, again stating only that "the injury is compensable bilateral repetitive trauma and they give more weight to progression of injuries over the specific dates of injury alleged."

This Court obviously did not rely on the Panel's deficient findings and instead sought to extract from the record for this matter evidence to make its own findings of fact. The Appellants trust that the analysis of such evidence outlined above supports their Petition for Rehearing in this case and gives this Court a basis to reverse the decision of the Appellate Panel.

CONCLUSION

For the reasons stated above the Appellants respectfully submit that this Court should grant their Petition for rehearing in this case.

Respectfully Submitted,

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Dated: March 30, 2023

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PROOF OF SERVICE

I certify that I have served a copy of the Appellants' Petition for Rehearing on counsel for the Respondent, Everett K. Chandler, Esquire by depositing a copy of it in the United States Mail, postage prepaid and / or electronic transmission on March 30, 2023 addressed to 103 Waterloo St., W., Aiken, S.C. 29801, and Andrea D. Roche, Esquire, by depositing a copy of it in the United States Mail, postage prepaid and / or electronic transmission on March 30, 2023 addressed to P.O. Box 7395, Columbia, S.C. 29202.

March 30, 2023

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