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SC Court of Appeals

Appellant Petition for Re-Hearing

The State of South Carolina
In the Court of Appeals

Appeal from Richland County
S.C. Worker's Compensation Commission

Commissioner(s): G. McCeskill, R. Taylor, M. Campbell II

Case No. 2021-000121

S. C. Department of Mental Health,
Employer, State Accident Fund, Carrier

Respondents

V.

Dana L. Dixon
Employee

Appellant

Motion for Re-Hearing

Dana L. Dixon
698 Stabler Farm Rd
St. Matthews, S.C. 29135
(470) 422-0591

M. Stephen Stubley
1122 Lady St. Suite 1000
Columbia, S.C. 29201
(803) 748-2259

Appellant's Motion for Re-Hearing On Appeal

My name is Dana L. Dixon. I am the Appellant for Case No. 2021-000121. I am writing this Motion to request a Re-Hearing based on

S.C. Code Ann. 42-15-60(k) which states:

The employer shall provide medical, surgical, hospital and other treatment, including medical and surgical supplies as reasonably may be required for a period not exceeding ten weeks from the date of an injury, to effect cure or give relief and for an additional time as in the judgment of the Commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty. In addition to it, the original artificial members as reasonably may be necessary must be provided by the employer. During any period of disability resulting from the injury, the employer at his own option, may continue to furnish or cause to be furnished, free of charge to the employee and the employee shall accept, and attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the Commission for good cause shown.

And I was discharged by attending physician Dr. Hynes on 03/23/2017, without a maximum medical of impairment rating. *There isn't one at S.C. W.C.B. that was filed.*

Records indicate Dr. Hynes was waiting to see me after I had the Ordered (c.p. 277) MRI of my right shoulder.

Appellants Motion for Re-Hearing On Appeal is Based on the following:

01/31/2017, first time @ Occupational Healthcare was seen by Doctor John D. Hynes. Who notated "It seems like flexor Tendon strain. (R.p.) shows: CC RT Arm.

On 02/17/2017. Dr. Hynes was ^{out} for the morning, was returning later that day, Dr. Motycka was the doctor. When I saw he asked questions and I gave answers. I mentioned the numbness in my fingers then ^{he} started telling me about the tendons in the Elbow. "But I am not having problems with my Elbow" then he tells me I have Tennis Elbow. "I don't play tennis. I was told in medical terms I have Right Lateral Epicondylitis (R.p. 270) (R.p. 270) Dr. Motycka wanted me to have MRI, to see the tendons. That was NOT authorized. (R.p. 277)

So my question is this. I am diagnosed with a new injury that is very painful due to a torn tendon, which I didn't have. But in order to know it's Epicondylitis you would need (I was sent to P.T.) an MRI to see the tendons. And if I had a problem as the doctor diagnosed Why was his diagnosis accepted only because he said so? 2 weeks prior to seeing Dr.

Motycka I saw Dr. Hynes and not once did he notate ANYTHING about Elbow/Epicondylitis. On the same day Dr. Hynes had returned to the office (R.p. 269) and darkens the box that states: All other systems reviewed and are negative/ non-contributory). Respondents stated that 02/24/2017 was (R.p. 225) the first time Dr. Hynes mentions my shoulder. If I complained w/ RT. Shoulder/Arm on the first day and I was still in pain and could NOT lift my right arm, and just finished physical therapy before going to see Dr. Hynes. 02/23/2017 was my (R.p. 290, 225) first day at physical therapy. I told Dr. Hynes I was in severe pain from P.T. (R.p. 295) (R.p. 273) (R.p. 281)

While still under the care of Dr. Hynes, and supposedly 42-15-60(A) doctor Hynes assessment became Right Shoulder (R.p. 279) Strain. Flexor tendon Strain - Wrist and he prescribed another medicine. (R.p. 276) Question: If I was under the care of the doctor (Dr. Hynes) and he is the person who is treating me and I have told him I can't lift my right arm since 01/31/2016 and I mention that to him at each visit and he can see I was in pain IS only part of 42-15-60(A) applied? And what is the point of an injured worker being sent for treatment at Respondents Choice of doctor(s) if the doctor can't get authorization for Tests of MRI, CAT scans? (R.p. 277, R.p. 291)

(R.p. 275-277) On 03/06/2017, I had a 3:30pm doctor appointment.

(R.p. 282) (R.p. 285) And physical therapy. On that date Dr. Hynes assessment was 1. Right Shoulder Strain, 2. Right Wrist, forearm Strain (R.p.)

Dr. Hynes noted Continued pain @ Shoulder, Continued down ROM (Range of motion) and wrote an order for an "MRI due to chronicity." (R.p. 276) On same page titled Return to work status it states next visit and Dr. Hynes check the box that states "Return after MRI." (R.p. 276) On 03/20/2017, I received

a form for my scheduled appointment for MRI. On the same day Respondents called me and said if I wanted to have an MRI, I would have to pay for it. Question: Was S.C. Code 42-15-60(A) applied when authorization was not given to the doctor who was treating me, since I had not exceeded 10 weeks of medical treatment? Why was the doctor who

(R.p. 272) saw me ^{able to} refer me for physical therapy and gave me a new injury authorized and not Dr. Hynes request for an MRI? (R.p. 270)

* Respondents stated the Shoulder was a new injury. * Even (Defendants page 1) after it was written on the form 01/31/2016. Again Respondents stated Worker's Compensation definition of the arm is from your finger tips to your Elbows. I asked Ms. Forthing to tell me where I

Could find that information, she stated it's their Codes of injury for Respondents.

(R.p. 284)

(L. 1-21)

(R.p. 283, L. 11-15)

(R.p. 289)

On 03/23/2017, I was released from Care with return to normal duty. On that same page, Dr. Hynes wrote discharged due to "MRI was not authorized" so my 3 NEW injuries were authorized and all three is the definition of Respondents ARM. How is it that Respondents can't let the doctor do his job as far as doing what is best for the injured worker? I realize that Dr. Hynes, ^{Hynes's} were tied and by there being nothing else, he remembered the Creed "Do No Harm."

Respondents knew that I had a prior rotator cuff surgery (R.p. 275, L. 10) and the E-mail stating this and "Do NOT authorize MRI/ had prior surgery on right shoulder." Question, wasn't I a liability to the S.E. D.M.H/ C.M. Tucker since I could not lift right arm and had back injury? (R.p. 291)

* I mailed copies of MRI of right shoulder to the (R.p. 292) Commission and Respondents. (MRI was ordered by my doctor in Charlotte, N.C.) I called W.C.C. and was told they had received them on 02/21/2019. And that Defendants will receive a copy as well. Something about some 67-? code.*

(R.p. 250)

(R.p. 251, L. 13)

(R.p. 253)

I never understood why when I filed motions at the lower court to ADD a voice mail from Respondents, since Respondents stated I never contacted anyone, and that was denied. And pages from some medical record at Carolina Occupational Health Care that I discovered Respondents did NOT submit. That was denied by Commissioner Beck, along with the MRI, to

4. have it on record.

the letter is dated 06/22/2019. In Defendants reply their #10. Stated: "the new evidence is of the same nature and character required for granting a new trial and show" and the moving party must further establish: (R.p. 251, R.p. 252)

Question: If I never seen my medical record there would be no reason to question anything, but when Defendants hands you what you think is your medical record on 2-22-2019, at your deposition you can't review it due to answering questions.

And when you do review the pages, makes a phone call to the doctor's office to ask the number of pages in medical record to learn Defendants DID NOT submit medical record in its entirety, and to file a motion to ADD the pages from same medical record as the Respondents. In its entirety and I am denied.

Respondents way of saving money for their company is really disheartening because I was medically excused from work, and due to me being in pain, no car instructions are faxed to Respondents telling them I was to have been OUT OF WORK FOR 8 DAYS.

Respondents submitted the Employer/Supervisor Notification form dated 02/01/2017. But failed to provide the Employer/Supervisor form that did not have instructions per: Occupational Healthcare (R.p. 287-290) that I received on 02/03/2017 when I was intimidated of losing my job if I did NOT report to my new work site. I signed the S.C. Dept of Mental Health memorandum of agreement for light duty/modified/Transitional duty assignment on 02/03/2017. At Bryan Center on Farrow Rd. Question: Is it a normal for a doctor to medically excuse a person from work for a full week and 1 day for a wrist? * The full commission added the 2nd Employer/Supervisor Notification into evidence.* R.p. 287-290)

Q: Who goes to work injured? Q: Why wasn't I informed by Respondents of instructions per doctor's orders instead of calling me telling me I HAD TO REPORT TO WORK?

And 5 Weeks I went from having "Seems like flexor Tendon Sprain" (01/31/2017) To Right lateral Epicondylitis (02/17/2017)
Primary doctor did Not diagnose Rt. lateral Epicondylitis Physical Therapy was Order for a NEW injury I never stated I had an issue with. Authorization approved. To Right Shoulder Sprain (03/06/2017)
Order for MRI was denied for primary doctor (In the Medical Record on 03/23/2017, Dr. Hynes wrote & signed ^{the} ~~page~~ not authorized by WCC) On 03/23/2017, I was released from care. (R.p. 279, L.2)

Q: If the primary doctor can't have authorization to do what is deemed reasonable according to D.C. Code 42-15-60(A) while an injured worker is under his care, in order to find the cause of the problem "due to chronicity" then how was he to fix the problem? (R.p. 276, L.8)

Q: Why was the doctor (metyc) whom I saw only once, had the final diagnosis of Right lateral Epicondylitis upon me being released with no type of tests to examine the Tendons of the Elbow? (R.p. 272, R.p. 280-285)

Q: Doctor Hynes wrote "Return after MRI" wouldn't that imply he was not releasing me? (R.p. 276)

Q: What does me having prior Rotator Cuff Surgery has to do with anything? I was able to do my jobs each time I was employed by the Respondents after 2002 Rotator Cuff Surgery.

Q: Why haven't there ever been a form 106 (Agreement for permanent Disability/Disfigurement Compensation) to Show Maximum Medical Improvement Submitted at the lower Court / Commission?

Respondents states I was in a MVA, and that is correct. I provided Exhibits 1-3, to show where the damage was on the passenger side of the car. Respondents stated I went to Providence for back pain, but in the Respondents, requested/ Subpoenaed medical record in which I used pages from to show that they state "Chief Complaint: neck pain" And "you were seen in the E.R. on 03/07/2017 for neck pain". Respondents stated I received payment for injuries. And that was not the case I received payment in the sum of \$ 2,300.00 dollars, that I paid the Ford Company on Graystone to repair light and dent on passenger side of car. I picked up the Ford Fiesta on 02/28/2017. (My new car) I wish I could file a motion to add check, receipt of payment to the Ford Company.

* Respondents stated I said Dr. Hynes had popped a white (R.p. 242.L.1-25) pill. While he was in the room with me. And that is correct, I said that. Dr. Hynes stated he had just returned from having back surgery. Q: How would I know about his surgery to mention it before now? Respondents stated I did not inform them about wanting another doctor or treatment. But after listening to my voicemails in which I still have I realize that I did both. Instead I made a complaint with the Medical Board. I was not aware it was to have been reported to the Commission. *

I stated on record on Monday June 08, 2020, (R.p. 242.L.19-24) that I did not get a chance to finish (my first report)

Also I would like to point out that the medical record was not submitted in it's original form of events. Respondents re-numbered them (R.p. 115.L.1-25) even Commissioner Wilkerson realized this. (R.p. 114.L.1-22)

R.p. 247.L.1-17, Prior torn rotator cuff.

R.p. 117. L. 14-15.

When Respondents stated to the COMAL that the claim was closed when I was released from Dr. Hayes

Closed with the Commission

R.p. L12-21

And it was reopened in 9/2017 when Ben Cruse filed a form 50

Page 11: R.p. L. 10-15

* On R.p. 136. L. 19-22 "Something in my arm popped."
p. 27 (R.p. 280 L. 13-15)

R.p. 137, L. 13-16. What's this called "fore arm".

R.p. 138. L. 3-18 X-Ray of wrist, light duty, still working another location

R.p. 139 L. 1-25. "C.W. Williams (R.p. 288)

R.p. 140 L. 13-23. "I Sat home for 9 days" So I thought
but Respondents Employee/Supervisor notification form shows I was at work.

(R.p. 288)

R.p. 141. L. 1-25.

I Stated I did not feel the need to, on record. But that was not the case. That was the reason I filed the motion, requesting to ADD the voicemail. (R.p. 251)

R.p. 142. L. 1-25 Dr. popping pill, me stating I did not mention wrist or elbow. (R.p. 293)

R.p. 143. L. 1-25. "He diagnosed you with Right lateral elbow epicondylitis, tennis elbow" (Dr. Matyke)

R.p. 144. L. 11-25. Me explaining car accident and what was damaged on the car. (R.p. ...)

R.p. 147. L. 19; Of me saying "from day one when he examined me."
(R.p. 262. L. 4)

R.p. 148. L. 1-25, Me stating how long I waited before going to Occupational Healthcare.

R.p. 149. L. 9, Is the name of person at State Accident fund, I'd spoken to.

R.p. 150. L. 15-25, Of me stating I never met my then attorney Benjamin ^{Cruse}.

R.p. 151. L. 1-18. Me stating the reason Mr. Cruse was no longer my attorney.

R.p. 151. L. ¹⁴⁻²⁵ Me stating that the doctor taking his pain medicine in front of me

R.p. 152. L. 1-25, About Dr. Hynes Order for MRI. * R.p. 152. L. 15-16*
(R.p. 277)

R.p. 153. L. 1-15, What doctor notated about MRI and physical therapy also.

R.p. 156. L. 24-25, Me mentioning Dr. Hynes notes.

R.p. 157. L. 1-10, Me trying to explain sitting a person back in a wheelchair.

R.p. 158. L. 1-25, Respondent stating "Shoulder was not an admitted body part, was not ^{an} accepted body part, it was not authorized at that time"
(R.p. 291)

* On 05/29/19 @ 4pm I had telephone Conference with
9. Commissioner Wilkerson and Respondent about Right lateral Epicondylitis diagnoses.

Subject:

RE: Dana Dixon DMH Claim Number

2017-0258 - Any Objections With Right Shoulder

MRI?

From: Raquel Fowler <r.fowler@compendumusa.net>

To: Megan Damiano <mdamiano@Saf.S.C.gov>

CC: 10 work Comp-mail@scdmh.org

<10.workcomp@mail@scdmh.org>, Contact @ Carolina @4.com

<Contact@Carolina.com>

Date: 2017-03-20 13:35

No problem - I'll update our file notes - Thank you.

Please let me know if I may be of further assistance.

Respectfully Submitted by,

Raquel Fowler, LPA

The Workers' Compensation nurse case manager with CompEndura Services,
Inc, the medical management company contracted by the SC State Accident
Fund to medically manage this worker's compensation claim.

Office Hours 8:00 am - 5:00 pm (mon-fri) | Phone: 877-709-2667
EXT # 1010 | Secured Main Fax: 877-710-2667 | Direct Secured fax:
866-488-8882 | Email: rfowler@compendumusa.net

10. # This^{is} word for word as what was said about
Me (Subject), Respondents forming an opinion about MRI.
Same form should be filed at Commission.

From: Meggan Damiano [mailto:mdamiano@Saf.S.C.gov]

Sent: Monday, March 20, 2017 1:27 PM

To: Raquel Foster

CC: IO WorkComp@mail@Sednh.org; Contact@Carolinaoh.com

Subject: RE: Dana Dixon DMH Claim Number 2017-0258-

Any objections with Right Shoulder MRI?

Hey Raquel,

The notes indicate she has a previous R RT & Surgery.
Also, it seems the reporting on the shoulder (in relation to this injury) is inconsistent. The claim came in for Right Arm Pain, but it was specified as right "lower" arm pain. This claim is accepted for the R Wrist/Forearm Strain only at this time.

* Please do not authorize the R Shoulder MRI. Thanks

Meggan Damiano
Claim Manager
South Carolina State Accident Fund
P.O. Box 102100
Columbia, S.C. 29221-5000
Direct: (803) 896-5893
Fax: (803) 612-2736

(R.P. 291)

I AM ASKING for a motion for Re-Hearing On Appeal because I did not receive proper treatment due to Dr. Hynes were not permitted to perform test that he felt was needed to fix the problem. And to be diagnosed with an injury I never had and receive Authorized Physical Therapy for a very painful condition, To be diagnosed with Right lateral Epicondylitis and No test were given (he wanted an MRI of my Elbow, but was not authorized by Respondents) (R.P. L) to go from Right Shoulder Strain to Right lateral Epicondylitis on discharged of 03/23/2017, from the doctor I saw only once.

Only to save money, I now realize that Respondents have made it a habit by going against Doctor(s) BEST interest of injured employee (me), with this claim I was to have been out of work from 01/31/2017 to 02/08/2017.

With my 2016 claim I was instructed to contact my doctor immediately, (S.C. Code 42-15-60(a)) I was denied treatment as well. I feel that if I had went to my doctor with both work injuries it would have been a lot easier in receiving the proper treatment and diagnoses, and not be denied treatment based on a prior surgeries. The only way Respondents knew of all surgeries, jobs, and so much more is because I willingly answered their questions pro-se at my Subpoenaed Deposition. Respondents APT was Transcript of 02/22/2019. And Respondent did state they had received MRI record of MRI. (R.P.)

So I beg this Court to please grant a motion for Re-Hearing On Appeal based on all I have listed.

Respectfully,
Dana L. Dixon

Proof of Service of Petition for Re-Hearing

The State of South Carolina
In the Court of Appeals

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APR 04 2023

SC Court of Appeals

Appeal from Richland County
S.C. Workers Compensation Comm.

Commissioner(s):

Case No.

S.C. Department of Mental Health
Employer, State Accident Fund, Carrier

Respondents

v.

Dana L. Dixon
Employee

Appellant

PROOF OF SERVICE

I certify that I have served the Petition for Re-Hearing
on M. Stephen Stabler, by depositing a copy of it in the United States
mail, postage paid on April 03, 2023. Addressed to attorney of
record, M. Stephen Stabler, 1122 Lady St. Suite 1000, Columbia, S.C. 29201

Dana L. Dixon
698 Stabler Farm Rd.
St. Matthews, S.C. 29135
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