

Brief of Appellant

Form 13

Brief of Appellant

The State of South Carolina

In The Court of Appeals

In The Supreme Court

South Carolina Court of Appeals
Jenny Abbate Kitching
Clerk
Post Office Box 11629
Columbia SC 29211

Case No... Misc File 0726629 @0913167

Debra A. Riley Prose

Appellant

v.

Mcc. Albermarle Oil, Emc Insurance, Mary Sewell League

Respondant

RECEIVED

JUN 26 2013

SC Court of Appeals

Final Brief of Appellant
[Signature] June 10 2013

Debra A. Riley Prose

P.O. Box 295

Patrick, S. C. 29584

**Under Rule 297 {c} F.C.M.R.C*

Patrick S. C. 29584
June 10 2013

Statement of Issues On Appeal

I. Did the trail court err in failing to find this action is barred by res judical?

I.I. Did the trail court err in charging the jury that fraud must be proved by a preponderance of the evidence?

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JUN 26 2013

SC Court of Appeals

Statement Of The Case

On June 18, 2012 claimants request for additional workmans compensation benefits for claim, November 14, 2007 & July 12, 2009 . Both Were denied by Susan S. Barden , & Full Commissioners, Gene McCaskill, T. Scott Beck, Derrick L. Williams, Debra A. Riley was present Pro Se , & Mary Sowell League Attorney For The Respondant Acc, Albermarle Oil, Emc Insurance.

Both the claims were herd on June 18, 2012. Mary Sowell League states on form 51 , Admitted to the injury occurred and hernia. but denied the neck on July 12, 2012. On Form 51 Mary Sowell League admitted to the claim in November 14, 2007. Back injury. The incident report filed states back shoulder neck for the November 12, 2007 incident. Both Were filed within State Statues And With the Employer . The Employer Stated Did Not Recall At Susan Barden's Hearing That is Statement on record. In Fact The Employer wrer all aware of the incident. On September 7, 2012 Mary Sowell League Was served the Notice to Appeal.

I. Because Respondant could have raised fraud in his prior breach of contract suit against appellants, he is barred by res judicata from bringing this suit.

J.J. Because fraud must be proved by clear and convincing evidence, the trial court erred when it charged the jury that the respondent must prove fraud by a preponderance of the evidence.

Conclusion

For the reasons stated, this court should reverse the judgement of the Commission.

September 7, 2012

Respectfully submitted,

Debra A. Riley Prose

P.O. Box 295

Patrick, Se. 29584

843-498-6849

Debra A. Riley Prose
June 10 2013

Facts

Counsel may wish to set out the facts relevant to the arguments at this point in the brief. This, however, is optional, and the relevant facts may be included in the discussion of each argument. In either case, the brief must contain references to where the facts can be found in the Record on Appeal. Initial briefs, these references shall be made in the manner specified by the rule 208b4 SCACR. In the final briefs these references shall be to the page and line number of record on appeal i.e., R.p. 37 lines 7-8. rules 214b1, SCACR.

Diana [Signature]
June 10 2013

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NOS. 0726629 & 0913167

RECEIVED
JUN 26 2013

Debra Riley,

SC Court of Appeals

Claimant/Appellant,

vs.

Albemarle Oil Company, Inc.,

Employer,

and

EMC Insurance Companies,

Carrier,
Defendants/Respondents.

Appellate Panel Review held in Columbia,
South Carolina on June 18, 2012 per notices
timely and properly served on all parties of
interest.

Appellate Panel Decision and Order filed
8/10, 2012.

APPEARANCES: Claimant/Appellant appeared pro se.

Defendants/Respondents represented by Mary Sowell League, Esquire, of
Columbia, South Carolina

STATEMENT OF THE CASE

The parties were heard by Commissioner Susan S. Barden on January 5, 2012 in Hartsville, South Carolina. On March 5, 2012, she issued the following Order:

WHEREFORE, IT IS ORDERED that the Claimant's request for additional workers' compensation benefits regarding the November 14, 2007 claim is denied, and the Claimant's request for workers' compensation benefits regarding the July 12, 2009 claim is also denied.

Within the statutory period, the pro se Claimant filed an application for review in this case, setting forth her reasons requesting reversal, copies of which were furnished to all interested parties, prior to being argued before the Appellate Panel on June 18, 2012.

At the Full Commission hearing, Claimant was advised by the Panel of her right to counsel, and her right to appeal the ruling of the Full Commission to the Court of Appeals within thirty (30) days from the receipt of the signed Full Commission Order. The parties were advised to stay within the record, and that additional evidence could not be accepted as the appeal was to be based upon what was currently in the record.

Commissioner McCaskill discussed that he had been present and observed the hearing below with Commissioner Barden, but had no participation in the decision making or outcome in the case below, and did not discuss the Commissioner's decision making or ruling below with her either prior or after the hearing. The parties stated they had no objection to Commissioner McCaskill remaining as part of the Full Commission Appellate Panel. The pro se Claimant also affirmed she was aware of her right to counsel, and that she wished to proceed with the argument in this appeal representing herself.

By appeal, the pro se Claimant respectfully submits the following:

1. Facts L-3 to S-1 hernaited (sic) disk back.

2. Facts C-3 to 6 herniated (sic) disk neck.
3. Facts 1 hernia – size fingertip (2 hernia 1.1 cm 6 inches width hand fingertip long.)
4. Reoccurrence of injuries on 11-14-07, occurred 7-12-09 hospital treatment 7-18-09, 5-5-11, 1-6-11.
5. Facts: occurred around lunch time to the afternoon)
6. no misrepresentation (sic): Tribunal (Facts – statement neck was told of (illegible) injure filed.

The Claimant argued that she had sustained injuries at work on November 14, 2007 and July 12, 2009 and requested reimbursement for past medical expenses associated with those alleged injuries, and related and ongoing medical care. She asked for a reversal of the Hearing Commissioner's order denying her these benefits.

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. § 42-17-50(1985), review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. After hearing argument of the parties and careful review of the record in this case, the Commission, by unanimous vote, has determined all of the Hearing Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, they shall become, and hereby are, the law of the case, and therefore, the Order is sustained in its entirety.

FINDINGS OF FACT

The following findings of fact remain herein:

1. Claimant alleges that she injured her low back, neck, and right shoulder in a work-related accident on November 14, 2007.

2. Claimant alleges that she re-injured her back and neck, and that she also sustained a hernia in a work-related accident on July 12, 2009.

3. Claimant is 48 years of age (medical evidence establishing Claimant's date of birth).

4. Claimant dropped out of school in the 10th grade, and later obtained her GED. She also attended college for 6 years off and on in psychology and paralegal studies, earning a 4.0 average. Claimant also received a certificate as a corrections officer, and received other certificates as well (testimony of Claimant).

5. Claimant's prior employment includes work on a farm, work driving tractor-trailers, work as an assistant manager, work in auto parts, work as a substitute teacher, and work as a jailer and prison guard (testimony of Claimant).

6. We find that the 2007 back injury is compensable. We base this finding on the incident report, the fact that (a) Claimant's supervisors note in her personnel file that the 2007 claim was "legitimate," (b) Defendants provided some medical treatment (as evidenced by a Form 18 in the Commission's file), and on (c) medical evidence dated November and December 2007, stating that Claimant injured her back lifting [beer] cases. However, there is no mention of a neck or shoulder injury or complaint in any of these records. We therefore find that the neck and shoulder are not compensable body parts (Defendants' APA #1, pages 1-3; Claimant's APA submission, dated 11/20/07; Defendants' APA, Exhibit A, page 29; Defendants' APA, Exhibit B, page 43).

7. After Claimant treated in November and December 2007, there is no further medical record relating to Claimant's back until after the date of the alleged 2009 injury (although Claimant visited her physician for other maladies in the interim). We therefore find

that Claimant's back injury resolved, and that Defendants are not liable for either (a) ongoing treatment (in March 2011, Claimant was discharged from care and told only to stretch and exercise), or (b) permanency benefits, for the 2007 injury/claim (Defendants' APA #2, page 21).

8. Claimant's alleged 2009 injuries are not compensable: (a) Claimant testified that she told Tracy Gillespie when they were in the cooler that she injured her back. Defendants presented cogent evidence that Tracy Gillespie did not work for Employer on that particular day (Defendants' APA, Exhibit A); (b) Claimant testified at her deposition that the injury occurred "somewhere around 5:00 p.m." A notice of accident form completed by Claimant states that the accident occurred at 1:30 p.m. At the hearing, Claimant testified that the injury occurred 2:30 or 3:00 p.m. (Claimant's Deposition, page 50, lines 9-10; NC Form 18, as contained in Claimant's submissions; Claimant's Deposition, page 55, lines 3-4; testimony of Claimant); (c) Claimant testified at her deposition that she injured her back and right shoulder, and that she sustained the hernia in the 2009 accident. However, at the hearing, Claimant testified that she also injured her neck, and not her right shoulder (testimony of Claimant; Claimant's Deposition, pages 66-67); (d) medical evidence from July 16, 2009 does state that Claimant complained of back pain at a visit to her doctor, but there is no mention of work or a work accident as a causative factor; not until 2011 did Claimant cite a work accident as the cause of her back problem (Defendants' APA #1, page 6; Defendants' APA #2, page 23); and (e) Claimant underwent an MRI of her lumbar spine in January 2011, revealing only "mild" degenerative changes with no protrusion or nerve root compression (Defendants' APA #3, pages 26-27; Claimant's APA submission, dated January 6, 2011). I considered Claimant's submission of a co-worker's statement (Marlena Mashburn), but Mashburn did not witness an accident; she merely states that Claimant told Mashburn that Claimant sustained an accident. In summary, there are too many overriding inconsistencies and

questions (not all of which are set forth herein) for the undersigned to find the 2009 alleged accident compensable.

9. Additionally, as to the 2009 hernia claim, Claimant does not meet the requirements of Section 42-9-40. Nor does the medical evidence support Claimant's contention of an accident-induced hernia. An ultrasound of Claimant's abdomen in 2011 revealed no abnormalities within the abdomen. Further, Claimant's doctor has not recommended surgery (Claimant's APA submission, dated *January 6, 2011*; Claimant's Deposition, page 57; Defendants' APA #1, page 9; Defendants' APA #2, page 25; Defendants' APA #3, page 28).

10. Since the date of the alleged accident in 2009, Claimant has sought and received unemployment benefits. In doing so, she has stated that she has "No" medical condition (Defendants' APA, Exhibit B).

11. Claimant does not request any temporary benefits; nor does she qualify for such under the Act.

12. Claimant is entitled to receive reimbursement for causally-related medicals incurred during November and December 2007.

13. There is no permanency with regard to the 2007 accident. I find that Claimant's back injury resolved by the end of December 2007.

14. The 2009 accident is not compensable.

15. For the 2007 claim, Claimant's average weekly wage is \$297.34, yielding a compensation rate of \$198.24.

16. For the 2009 claim, Claimant's average weekly wage is \$368.63, yielding a compensation rate of \$245.76.

CONCLUSIONS OF LAW

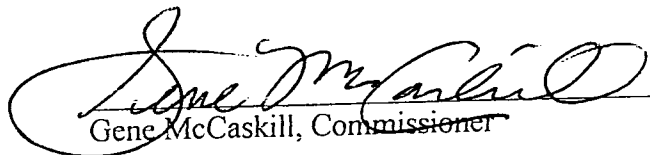
1. S.C. Code Ann. § 42-1-40 governs average weekly wage.
2. S.C. Code Ann. §§ 42-120, 42-9-20 and 42-9-30 govern disability and compensation.
3. S.C. Code Ann. § 42-9-40 governs claims for hernia compensation.

ORDER

IT IS THEREFORE, ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on March 5, 2012 is hereby affirmed by the Panel, and the same shall constitute the Decision and Order of the Appellate Panel.


AND IT IS SO ORDERED.

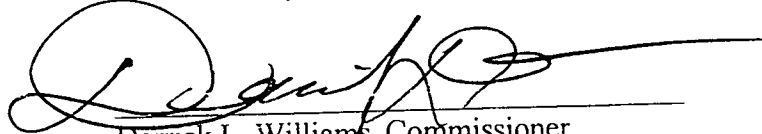
S.C. WORKERS' COMPENSATION COMMISSION


Gene McCaskill, Commissioner

FULL AFFIRMATION

CONCUR:


T. Scott Beck, Commissioner


Derrick L. Williams, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this data served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 10 day of August, 2012
By Valerie D. Decker
Administrative Assistant to the Commissioner

Debra Riley (Req & cert)
Scott Torrance

To Whom this letter may concern enclosed is 25.00 for a written copy of my transcripts dated January 5 2012, December 5 2011, March 5, 20012, June 18, 2012. Total enclosed is 100.00 for the transcripts.

Sincerely, Debra A Riley

October 12, 2012

Will introduce evidence of the facts

- 1) C-3-C-5 Herniated Disk
- 2) L-3 - ~~S~~-1 Herniated Disk
- 3) Hernia Left abdomen

Sincerely
Debra A Riley
June 10 2013