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SC Court of Appeals

State of South Carolina
Workers' Compensation Commission
APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: Commissioner Avery B. Wilkerson, Jr., Commissioner Melody L. James,
Chair, Commissioner R. Michael Campbell, II

SCWCC File No.: 1914733

WILLIAM OLIVER,

Claimant,

v.

SYNCREON,

Employer,

and

TRAVELERS INSURANCE COMPANY,

Carrier,

Defendants.

AFFIRMED

Hearing held in Richland County, South Carolina,
on March 13, 2023

Per notice timely and properly served upon all Parties of Interest.

Appearances: CLAIMANT/RESPONDENT, represented by Jacob M. Smith, Esquire of
Lexington County, South Carolina

DEFENDANTS/APPELLANTS, represented by Christopher C.
Mingledorff of Charleston, South Carolina.

Court Reporter: Court Reporter – Sarah Costilow – 803-252-3445

Filed: June 19, 2023

I. STATEMENT OF THE CASE

This is an appeal by Syncreon and its Carrier, Travelers Insurance Company (collectively “Appellants” or “Defendants”) from the Decision and Order of Commissioner Gene McCaskill, filed on December 12, 2022.

These claims were before the South Carolina Workers’ Compensation Commission pursuant to a Form 50 filed by Mr. Oliver on January 28, 2020. It was the position of Mr. Oliver that he sustained a compensable injury by accident to his left shoulder on September 14, 2019, when he was attempting to unload a bin into a trash compactor. He requested payment for all past and continued causally related medical treatment and temporary total disability benefits. Mr. Oliver also requested additional ongoing medical treatment be provided by the previously authorized treating physician, Dr. William Owens. Defendants denied that Claimant sustained a compensable injury by accident or aggravation of a pre-existing condition. Specifically, Defendants asserted a fraud in the application of employment defense to the claim.

A Hearing was initially held in this matter on October 29, 2020, before Commissioner Gene McCaskill (“Hearing Commissioner”). The Hearing Commissioner initially denied the claim. The Hearing Commissioner’s Order was appealed by Mr. Oliver to the Full Commission Appellate Panel (“Appellate Panel”) on April 30, 2021. Specifically, Mr. Oliver argued that the Hearing Commissioner erred in finding the claim barred by the fraud in the application of employment defense and, therefore, the Hearing Commissioner erred in finding that Mr. Oliver did not sustain a compensable injury by accident. On May 9, 2022, the Appellate Panel issued an Order finding that the Hearing Commissioner erred in finding and barring Mr. Oliver from benefits based on a fraud in the application defense of employment. The Appellate Panel reversed and vacated the Hearing Commissioner’s Order and remanded the claim back to the Hearing Commissioner to

review the evidence and to determine whether Mr. Oliver sustained a compensable injury by accident without consideration of the fraud in the application of employment defense.

The subsequent Hearing in this matter was held before the Hearing Commissioner in Berkeley County, South Carolina, on August 12, 2022. By way of a Decision and Order filed on December 12, 2022, the Hearing Commissioner determined that Mr. Oliver sustained a compensable injury by accident and/or aggravation of a pre-existing condition to his left shoulder on September 14, 2019. The Hearing Commissioner ordered that Claimant was not at maximum medical improvement and that he was entitled to past and future causally related medical treatment as ordered or directed by the authorized treating physician, Dr. William Owens. The Hearing Commissioner also ordered that Defendants pay temporary total disability benefits from August 12, 2022, to present and continuing.

Within the statutory period, the Defendants filed an Application for Review in the case setting forth their reasons, copies of which were furnished to all interested parties, prior to oral arguments were presented before the Full Commission Appellate Panel ("Appellate Panel") on March 13, 2023. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered to the undersigned members of the Appellate Panel and has been reviewed and considered.

After careful review in the instant case of all grounds raised, the evidence in the record, and oral arguments from both counsels, the Appellate Panel finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be Affirmed in its entirety.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

SINGLE COMMISSIONER FINDINGS OF FACT

Subject to granted objections and respective evidence exclusions related thereto, the Hearing Commissioner found as follows:

1. That the matter was heard on appeal by the Full Commission on 08/12/2022.
2. That the Full Commission ordered that the, "Decision and Order of the Single Commissioner is hereby Reversed as to the decision regarding fraud in the application, Vacated, and Remanded back to the Hearing Commissioner to determine whether there was an injury by accident without any consideration of any fraud in the application."
3. That based on those directives, I have reviewed the Commission file as it exists in this claim.
4. That based on that review, I have determined that I cannot rely on the testimony of the Claimant, nor can I rely on the testimony of Mr. Jimmy Henderson.
5. That the testimony of Mr. John Kramp is not determinative as to compensability.
6. That while there was security video at the time of the alleged accident, that video did not exist at the time of the initial hearing.
7. That this is an unwitnessed accident.
8. That both Mr. Oliver and Mr. Henderson testified at the hearing.
9. That I have reviewed the testimony of both the Claimant and Mr. Henderson. I find their testimony is not determinative as to the issue of causation.
10. That therefore, I must turn to the medical records and specifically the medical opinion of Dr. William Owens which is captured in a medical questionnaire that is part of the record.

11. That Dr. Owens answers in the affirmative the question, "Do you believe most probably to a reasonable degree of medical certainty that Mr. William Oliver's left shoulder injury most probably result (sic) from his performance of his job activities and/or work-related aggravation of a pre-existing condition?"
12. That Dr. Owens also opines in the affirmative as to the lessening of Mr. Oliver's period of disability from the medical treatment heretofore provided.
13. That he further opines in the affirmative that the Mr. Oliver's future medical care and treatment which he believes will lesson Mr. Oliver's period of disability for his work-related accident.
14. That Dr. Owens opines that Mr. Oliver has not reached MMI.
15. That all of Dr. Owens opinions cited above are given most probably to a reasonable degree of medical certainty.
16. That when the evidence is considered as a whole and with the application of the Full Commission's directive, I must find the [sic] Mr. Oliver has suffered a compensable work-related injury to his left shoulder.
17. That I have arrived at that conclusion based primarily on the medical opinion as to causation from Dr. Owens.
18. That given the most recent case law from the Court, I cannot substitute my opinion for that of a doctor. And given the directive from the Full Commission, my analysis of this claim is controlled by that case law.
19. That I find that the Mr. Oliver is not at MMI.
20. That Mr. Oliver is entitled past and future causally related medical treatment as ordered or directed by the authorized treating physician.

21. That the authorized treating physician is to be Dr. William Owens. Should reason arise to change the authorized treating physician, that change can only occur by agreement of the parties or by order of the Commission.
22. That Mr. Oliver is entitled to Temporary Total Disability benefits from the date of the hearing on remand – August 12, 2022 – to present and continuing.
23. That all other issues are held in abeyance.

SINGLE COMMISSIONER CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, South Carolina Code Annotated (1976), as amended, it is the determination of [the Single Commissioner] that:

1. That pursuant to S.C. Code §42-17-20 jurisdiction and venue are proper.
2. That pursuant to S.C. Code R. 67-210(b) and 67-213(c) parties received proper notice of the hearing.
3. That pursuant to S.C. Code §42-1-130, 42-1-140, 42-1-150, an employment relationship existed between Claimant and Employer Syncreon.
4. That pursuant to S.C. Code § 42-1-160 and 42-9-35, Claimant sustained a compensable injury by accident to his left shoulder as a result of an aggravation of a preexisting condition.
5. That pursuant to S.C. Code § 42-15-60, Claimant is entitled to ongoing medical treatment with Dr. William Owens, the authorized treating physician, as a result of his work accident. Should reason arise to change the authorized treating physician, that change can only occur by agreement of the parties or by order of the Commission.

6. That pursuant to S.C. Code § 42-9-10, Claimant is entitled to temporary total disability benefits from the date of the hearing on remand – August 12, 2022 – to present and continuing.

III. ISSUES ON APPEAL

Specifically, the Respondents respectfully request the Appellate Panel to reverse the Decision and Order of the Hearing Commissioner in its entirety based upon the following grounds:

1. Whether the Hearing Commissioner erred in review of the Full Commission's May 9, 2022 Order and the directives therein. (See December 12, 2022 Order at p. 10, ¶ 3).
2. Whether the Hearing Commissioner erred by failing to address whether there was an injury by accident as directed by the Full Commission's May 9, 2022 Order and directives therein. (See December 12, 2022 Order at p. 10).
3. Whether the Hearing Commissioner erred in failing to address, rule upon or otherwise consider the Defendants' argument and evidence in support thereof that Claimant did not suffer a compensable injury by accident pursuant to S.C. Code Ann. § 42-1-160 as a result of Claimant's prior shoulder impairment and work restrictions, yet taking a job with Defendant Employer outside of those restrictions. (See April 19, 2021 Order at p. 18, ¶¶ 16-19, p. 21-22, ¶¶ 40-45, 47-52; see Defendant's August 12, 2022 Form 58 at ¶ 4; see Defendant's August 12, 2022 APA at pp. 1-2 and pp. 133-143; see October 29, 2020 Hearing Transcript at pp. 21-22, 30, 37, 38, 39, 48-51).
4. Whether the Hearing Commissioner erred in determining he could not rely on the testimony of Mr. Jimmy Henderson, when:
 - a. Mr. Jimmy Henderson testified at the October 29, 2020 hearing;
 - b. the Hearing Commissioner originally held Mr. Henderson was "consistent in his testimony" (see April 19, 2021 Order at p. 16); and
 - c. the Hearing Commissioner originally "noted that Mr. Henderson no longer works for the Employer...as such, Mr. Henderson had no interest in the outcome of this hearing" (see April 19, 2021 Order at p. 19, ¶ 33);

yet, the Hearing Commissioner changed his mind about Mr. Henderson's witness credibility in the December 12, 2022 Order after hearing no new testimony and not examining any additional evidence. (See December 12, 2022 Order at p. 4, ¶ 4).

5. Whether the Hearing Commissioner erred in holding an accident occurred on September 14, 2019, when the Hearing Commissioner originally held "as to whether an accident

occurred on 09/14/2019, I am not persuaded it did,” yet the Hearing Commissioner accepted no new testimony or evidence prior to issuing the December 12, 2022 Order. (Compare April 19, 2021 Order at p. 20, ¶ 38 and December 12, 2022 Order at p. 12, ¶ 4).

6. Whether the Hearing Commissioner erred in finding Claimant met his burden of proof when the alleged accident was unwitnessed and the Hearing Commissioner, at all times, has not found Claimant to be a credible witness.
7. Whether the Hearing Commissioner erred in relying upon the medical opinions of Dr. William Owens (see December 12, 2022 Order at pp. 10-11, ¶¶ 10-15) when:
 - a. the Hearing Commissioner accepted no new testimony or evidence prior to issuing the December 12, 2022 Order; and
 - b. the Hearing Commissioner held he “cannot rely on the testimony of the Claimant” (see December 12, 2022 Order at p. 10, ¶ 4);

yet the Hearing Commissioner originally held that “the only evidence as to whether there was an accident is the testimony of the Claimant,” that “it must be noted that all of those documents [referring Dr. Owens’ medical opinions and records] emanate from the report of the Claimant,” that Dr. Owens’ medical opinions “assume that what the Claimant has told him as to how he got hurt is factual,” and that the Hearing Commissioner was “not persuaded it is.” (see April 19, 2021 Order at p. 21, ¶ 38).

8. Whether the Hearing Commissioner erred in holding claimant “has suffered a compensable work-related injury to his left shoulder.” (See December 12, 2022 Order at p. 11, ¶ 16).
9. Whether the Hearing Commissioner erred in holding claimant “entitled to past and future causally related medical treatment as ordered or directed by the authorized treating physician.” (See December 12, 2022 Order at p. 11, ¶ 20).
10. Whether the Hearing Commissioner erred in holding claimant is “entitled to Temporary Total Disability benefits from the date of the hearing on remand – August 12, 2022 – to present and continuing” when the most recent work note in evidence is dated October 17, 2019 and only holds Claimant out of work until November 21, 2019 (see Claimant’s APA at p. 8 of 53). (See December 12, 2022 Order at p. 11, ¶ 22).
11. Whether the Hearing Commissioner erred in holding “[t]hat pursuant to S.C. Code §42-1-160 and 42-9-35, Claimant sustained a compensable injury by accident to his left shoulder as a result of an aggravation of a preexisting condition.” (See December 12, 2022 Order at p. 12, ¶ 4).
12. Whether the Hearing Commissioner erred in holding “[t]hat pursuant to S.C. Code §42-15-60, Claimant is entitled to ongoing medical treatment with Dr. William Owens, the

authorized treating physician, as a result of his work accident.” (See December 12, 2022 Order at p. 12, ¶ 5).

13. Whether the Hearing Commissioner erred in holding “[t]hat pursuant to S.C. Code §42-9-10, Claimant is entitled to temporary total disability benefits from the date of the hearing on remand – August 12, 2022 – to present and continuing.” (See December 12, 2022 Order at p. 12, ¶ 6).

The Form 30 is contained within the Commission’s file.

IV. DECISION OF THE APPELLATE PANEL

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including, but not limited to, the Hearing testimony of Mr. Oliver, Mr. John Krampp and Mr. Jimmy Henderson, along with review of the medical records and exhibits submitted through the APAs, WE FIND AS A FACT:

1. That the matter was heard on appeal by the Full Commission on 08/12/2022.
2. That the Full Commission ordered that the “Decision and Order of the Single Commissioner is hereby Reversed as to the decision regarding fraud in the application, Vacated, and Remanded back to the Hearing Commissioner to determine whether there was an injury by accident without any consideration of any fraud in the application.”
3. That based on those directives, we have reviewed the Commission file as it exists in this claim.
4. That based on that review, we have determined that we cannot rely on the testimony of the Claimant, nor can we rely on the testimony of Mr. Jimmy Henderson.
5. That the testimony of Mr. John Krampp is not determinative as to compensability.
6. That while there was security video at the time of the alleged accident, that video did not exist at the time of the initial hearing.
7. That this is an unwitnessed accident.

8. That both Mr. Oliver and Mr. Henderson testified at the hearing.
9. That we have reviewed the testimony of both the Claimant and Mr. Henderson. We find their testimony is not determinative as to the issue of causation.
10. That therefore, we must turn to the medical records and specifically the medical opinion of Dr. William Owens which is captured in a medical questionnaire that is part of the record.
11. That Dr. Owens answers in the affirmative the question, "Do you believe most probably to a reasonable degree of medical certainty that Mr. William Oliver's left shoulder injury most probably result (sic) from his performance of his job activities and/or work-related aggravation of a pre-existing condition?"
12. That Dr. Owens also opines in the affirmative as to the lessening of Mr. Oliver's period of disability from the medical treatment heretofore provided.
13. That he further opines in the affirmative that Mr. Oliver's future medical care and treatment which he believes will lesson Mr. Oliver's period of disability for his work-related accident.
14. That Dr. Owens opines that Mr. Oliver has not reached MMI.
15. That all of Dr. Owens opinions cited above are given most probably to a reasonable degree of medical certainty.
16. That when the evidence is considered as a whole and with the application of the Full Commission's directive, we must find the Mr. Oliver has suffered a compensable work-related injury to his left shoulder.
17. That we have arrived at that conclusion based primarily on the medical opinion as to causation from Dr. Owens.

18. That given the most recent case law from the Court, we cannot substitute our opinion for that of a doctor. And given the directive from the Full Commission, our analysis of this claim is controlled by that case law.
19. That we find that Mr. Oliver is not at MMI.
20. That Mr. Oliver is entitled to past and future causally related medical treatment as ordered or directed by the authorized treating physician.
21. That the authorized treating physician is to be Dr. William Owens. Should reason arise to change the authorized treating physician, that change can only occur by agreement of the parties or by order of the Commission.
22. That Mr. Oliver is entitled to Temporary Total Disability benefits from the date of the hearing on remand – August 12, 2022 – to present and continuing.
23. That all other issues are held in abeyance.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, South Carolina Code Annotated (1976), as amended, it is the determination of this Commission that:

1. That pursuant to S.C. Code §42-17-20 jurisdiction and venue are proper.
2. That pursuant to S.C. Code R. 67-210(b) and 67-213(c) parties received proper notice of the hearing.
3. That pursuant to S.C. Code §42-1-130, 42-1-140, 42-1-150, an employment relationship existed between Claimant and Employer Syncreon.
4. That pursuant to S.C. Code § 42-1-160 and 42-9-35, Claimant sustained a compensable injury by accident to his left shoulder as a result of an aggravation of a preexisting condition.

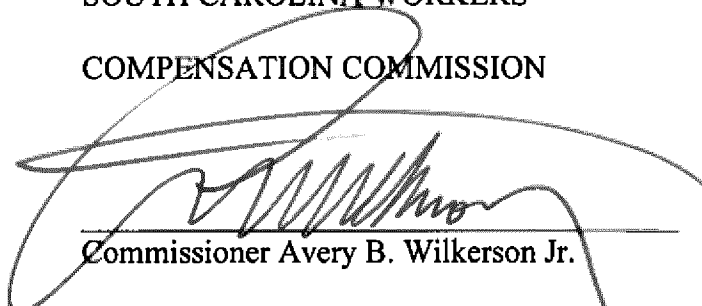
5. That pursuant to S.C. Code § 42-15-60, Claimant is entitled to ongoing medical treatment with Dr. William Owens, the authorized treating physician, as a result of his work accident. Should reason arise to change the authorized treating physician, that change can only occur by agreement of the parties or by order of the Commission.
6. That pursuant to S.C. Code § 42-9-10, Claimant is entitled to temporary total disability benefits from the date of the hearing on remand – August 12, 2022 – to present and continuing.

V. ORDER

IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above-captioned matter on December 12, 2022, is hereby UNANIMOUSLY AFFIRMED IN ITS ENTIRETY.

AND IT IS SO ORDERED.

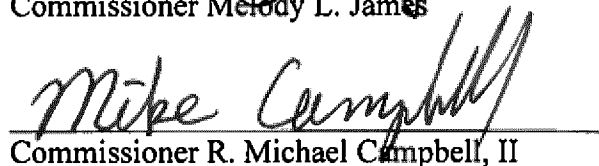
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Avery B. Wilkerson Jr.



Commissioner Melody L. James



Commissioner R. Michael Campbell, II

Order Served via email:

Christopher C. Mingleorff Michael Patterson Mingleorff & Patterson chris@mptrial.com	Jacob M. Smith Smith & Jones jsmith@smithandjoneslaw.com
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on June 19, 2023