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STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE APPELATE
PANEL OF THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC File No.: 1101678

Sean Daley, Appellant

v.

Chapman Mechanical and
Stonewood Insurance Company
are the Respondents.



NOTICE OF APPEAL

Sean Daley appeals the Decision and Order of the South Carolina Workers' Compensation Commission's Appellate Panel dated April 15, 2013. Appellant received written notice of this Order on June 14, 2013.

Pursuant to S.C. Code Ann. § 42-17-60 (Supp. 2009), Appellant states the following grounds for the appeal as well as the alleged errors of law:

1. The Commission erred in finding and concluding that Appellant was not permanently and totally disabled.
2. The Commission erred in finding and concluding that neither Dr. Mullen nor Dr. Gualtieri found the Appellant to be disabled by any psychological or psychiatric injury.
3. That the Commission erred in finding that Dr. Gualtieri opined that the Appellant was only a "bit" depressed and not that the Appellant was suffering from any disabling psychiatric or psychological condition.

4. That the Commission erred in failing to find that Dr. Gualtieri prescribed psychiatric medications for the Appellant, thus clearly indicating that Dr. Gualtieri felt the Appellant had a clear psychiatric condition due to his work related injury.
5. That the Commission erred in failing to find that the Respondents failed to properly treat the Appellant's psychiatric/psychological condition when they specifically requested that the Commission postpone the previously scheduled hearing for several months so that the Appellant could be sent to their out of state psychiatrist, Dr. Gualtieri, who then diagnosed the Appellant as having depression as a result of his admitted on the job injury and prescribed medications for same, yet the Respondents refused to allow the Appellant to fill the prescriptions given by the Respondents chosen physician.
6. That the Commission erred in finding that Dr. Gualtieri did not anticipate any persistent neuropsychiatric difficulties or disabilities from the Appellant's admitted on the job injury.
7. That the Commission erred in failing to find that Dr. Mullen diagnosed the Appellant with work/injury related anxiety, depression, and/or other psychological/psychiatric disorders as a result of his admitted on the job injury.
8. That the Commission erred in failing to find that Dr. Brabham diagnosed the Appellant with work/injury related anxiety, depression, and/or other psychological/psychiatric disorders as a result of his admitted on the job injury.
9. That the Commission erred in finding that the Appellant should have been capable of light duty work.
10. That the Commission erred in finding that the substantial evidence failed to show that the Appellant was unable to work.
11. That the Commission erred in finding that Dr. Brabham's evaluation showed that the Appellant was unable to work and was therefore permanently and totally disabled.
12. That the Commission erred in finding that the Appellant's prior back problems interfered with his ability to perform gainful work as a commercial plumber.
13. That the Commission erred in finding that the Appellant sought treatment prior to his injury for back pain at approximately the same level as he experienced after his admitted work related injury which involved falling off of an eight (8') foot ladder and essentially impaling himself on a piece of PVC pipe sticking out of the floor.
14. That the Commission erred in finding that the Appellant's prior back problems in any way contributed to his level of disability subsequent to his admitted work related injury at the Respondents' place of business.
15. That the Commission erred in finding that this was a single member injury case under Singleton v. Young Lumber Company, 236 S.C. 471, 114 S.E.2d 845 (1961).
16. That the Commission erred in failing to find that the Appellant suffered an injury to more than one member.

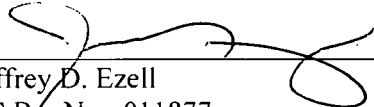
17. That the Commission erred in failing to properly construe Hutson v. S.C. State Ports Authority, 390 S.C. 108, 700 S.E.2d 462 (Ct.App. 2010) for the proposition that the Single Commissioner should have allowed and/or considered the Appellant's uncontroverted testimony that his admitted work related injury affected not only his back, but also his hips, legs, and psyche.
18. That the Commission erred in finding that any contended radiculopathy emanates from the back and there is no independent injury to the hips, buttocks, or lower extremities.
19. That the Commission erred in finding that the South Carolina Workers Compensation Act requires independent injury to the hips, buttocks, or lower extremities when, in fact, an injury to the back that affects the hips, buttocks, or lower extremities is sufficient to prove injury to more than one member or body part.
20. That the Commission erred in failing to properly consider and/or construe Carter v. Penny Tire and Recapping Co., 261 S.C. 341, 200 S.E.2d 64 (1973) and/or Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (Ct.App. 2007) for the proposition that the South Carolina Workers' Compensation Act is to be liberally construed in favor of the claimant.
21. That the Commission erred in that the evidence for any psychological and/or psychiatric overlay is too underwhelming to merit an award for same.
22. That the Commission erred in finding that the Appellant's prior back problems, with which he was completely functional prior to the admitted work related accident, were in any way causing his post-accident limitations and/or disabilities, save for the fact that the admitted work related accident may have aggravated the Appellant's preexisting condition(s).
23. That the Commission erred in finding that the initial questionnaire with Dr. McHenry had anything substantive to do with the Appellant's claim for psychological and/or psychiatric disorders, conditions, or injuries.
24. That the Commission erred in failing to find that the restrictions placed upon the Appellant by the Functional Capacities Evaluation rendered him permanently and totally disabled.
25. That the Commission erred in finding that the Respondents had provided all proper and adequate medical care and/or treatment.
26. That the Commission erred in failing to allow testimony as to the maltreatment the Appellant sustained at the behest of the Respondents and the impact same had upon his psychological and/or psychiatric condition.
27. That the Commission erred in failing to find that the Respondents' maltreatment of the Appellant caused and/or contributed to his psychological and/or psychiatric condition and/or injury.
28. That the Commission erred in finding that the Appellant was noncompliant with medical treatment.
29. That the Commission erred in finding that the Appellant sustained only a twenty percent (20%) permanent partial disability to his back.

30. That the Commission erred in failing to find that the Appellant sustained an injury to his hips.
31. That the Commission erred in failing to find that the Appellant sustained an injury to his legs.
32. That the Commission erred in concluding that this case is governed by Singleton v. Young Lumber Company, 236 S.C.471, 114 S.E.2d 845 (1961).
33. That the Commission erred in concluding that this case is governed S.C. Code Section 42-9-30.
34. That the Commission erred in ordering that the Appellant is entitled only to 20% permanent partial disability to his back.
35. That the Commission erred in denying all other aspects of the Appellant's claim, namely permanent and total disability, injuries to his hips and/or legs, and/or psychological/psychiatric injury or injuries.
36. That the Commission erred in granting the Respondents credit for all compensation paid subsequent to December 21, 2011.
37. That the Commission erred in failing to find that the substantial evidence supported an award for psychiatric and/or psychological injury.
38. That the Commission erred in failing to find that the substantial evidence supported an award for disabling injury to more than one (1) body part.
39. That the Commission erred in failing to find that the substantial evidence supported an finding of permanent and total disability.

40. That the Commission erred in failing to find that the Appellant's psychological and/or psychiatric injury resulted not only from the pain he suffers as a result of his on the job injury, but also from the maltreatment he suffered at the hands of the Respondents, as well as the significant physical and vocational limitations he now suffers as a result of his on the job injury.

Respectfully submitted,

7/10/13
Date


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(704) 378-8888

Attorney for Respondents

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1101678

Sean Daley,)
)
Employee,)
Claimant,)
vs.)
)
Chapman Mechanical,)
)
Employer,)
)
And)
)
Stonewood Insurance,)
)
Carrier,)
Defendants)

CERTIFICATE OF
SERVICE

The undersigned certifies that she is an employee of Jeffrey D. Ezell, Attorney at Law, and that she served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to §15-9-930 and §15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Genny Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Mr. Steve Rudisill
Rudisill, White & Kaplan, P.L.L.C.
212 S. Tryon Street, Suite 1440
Charlotte, NC 28201

Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

DOCUMENT: Notice of Appeal

DATE OF MAILING: July 10, 2013

Janet Spruell
Paralegal to Jeffrey D. Ezell

Jeffrey D. Ezell
Certified Circuit Court Mediator
Family Court Mediator

jeff@jeffezelllawfirm.com



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July 10, 2013

Genny Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Sean Daley vs. Chapman Mechanical
WCC File No.: 1101678
Carrier: Stonewood Insurance

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of our Notice of Appeal in the above referenced matter. By copy of this letter, I am providing the attorney for the Defendant, Mr. Steve Rudisill, and the Judicial Directory for the SC Workers' Compensation Commission, a copy of same. I would greatly appreciate it if you would return one (1) clocked copy of the Notice of Appeal to me in the enclosed postage paid envelope. Also enclosed is our check in the amount of \$100.00 for the filing fee for same.

If you should have any questions, please feel free to contact our office. Otherwise, I hope this letter finds you doing well and look forward to hearing from you soon.

Sincerely yours,
EZELL LAW FIRM, LLC

Janet Spruell
Paralegal to Jeffrey D. Ezell

JHS
Enclosures

CC: Sean Daley
Steve Rudisill, Esq., Rudisill, White, & Kaplan, P.L.L.C.
Virginia Crocker, Judicial Director, SC Workers' Compensation Commission

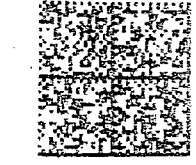
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