

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC No. 0920040

John R. Bowen,

Respondent/Appellant,

v.

Vinyl Services, Inc. South Carolina Builders
SIF and Bridgefield Casualty Ins. Co.,

Defendants,

Of whom Vinyl Services, Inc. and Bridgefield
Casualty Ins. Co. are

Appellants/Respondents.

and South Carolina Builders SIF is

Respondent.

**APPELLANTS' REPLY BRIEF
OF APPELLANTS/RESPONDENTS TO
BRIEF OF RESPONDENT**

RECEIVED

APR 11 2013

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SC Court of Appeals

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STATEMENT OF THE ISSUE ON APPEAL

- I. IS APPELLANT BRIDGEFIELD BARRED FROM ARGUING THAT BOWEN'S CURRENT BACK CONDITION IS CAUSALLY RELATED TO HIS LONGSTANDING, PRE-EXISTING BACK PROBLEMS?

ARGUMENTS

I.

APPELLANT BRIDGEFIELD HAS PROPERLY PRESERVED ITS RIGHT TO ARGUE THAT BOWEN'S CURRENT BACK CONDITION IS RELATED TO HIS LONGSTANDING HISTORY OF BACK PROBLEMS.

While Home Builders contends that both Bowen and Bridgefield are barred from arguing that Bowen is entitled to any additional benefits in regard to the March 22, 2004 accident since neither party appealed the Single Commissioner's Finding of Fact or Conclusion of Law, it appears Home Builders has misinterpreted Bridgefield's argument. (See Respondent's Brief, p. 19). Bridgefield is not asserting that Bowen *is entitled to additional benefits* as a result of his March 22, 2004 work accident. In fact, since Bridgefield was not a party to the March 22, 2004 claim, Bridgefield takes no position regarding Bowen's entitlement to additional benefits from that claim.

That being said, Bridgefield is not barred from arguing that Bowen's current back problems are related to his longstanding, pre-existing back condition. In its Form 30, Request for Commission Review, dated December 1, 2010, Bridgefield specifically noted the following as one of its grounds for appeal:

23. The Hearing Commissioner erred in not finding claimant's back problems are related to his longstanding, pre-existing back condition; the error being that the evidence dictates that such is the case.

(R. p. 55).

Additionally, in its Notice of Appeal to this Court, dated July 28, 2011, Bridgefield once again listed the following as a ground for its appeal:

22. The Commission erred in not finding claimant's back problems are related to his longstanding, pre-existing back condition; the error being that the medical evidence and testimony clearly establish that claimant had low back problems dating back to his 2004 injury.

(R. p. 61).

Clearly, Bridgefield has preserved its right to argue that Bowen's current back problems are related to his longstanding, pre-existing back condition and not to his alleged repetitive trauma injury culminating on November 11, 2009.

CONCLUSION

Therefore, based on the foregoing, even assuming that Home Builders is correct and that Bowen is not entitled to any additional benefits from his March 22, 2004 work accident, Bridgefield has properly preserved its right to argue that Bowen's current back problems are related to his longstanding, pre-existing back condition. As noted above, Bridgefield, who was not a party to the 2004 work accident, does not take a position regarding Bowen's entitlement to additional benefits from that claim. Instead, Bridgefield simply asserts that Bowen's current back problems are related to his longstanding history of back problems and not to his alleged repetitive trauma injury culminating on November 11, 2009.

As previously argued, Bridgefield maintains that Bowen's job with Vinyl Services was not a repetitive job as required by S.C. Code Ann. § 42-1-172 (2007), and that his alleged repetitive trauma injury was not an accidental result as required by the

South Carolina Workers' Compensation Act. (*See* Appellants' Brief of Appellants/ Respondents, pp. 16-27). Additionally, assuming *arguendo* that Bowen sustained a compensable repetitive trauma injury, Bridgefield contends that Bowen's claim should be denied since he failed to provide Vinyl Services with proper notice of his alleged repetitive trauma injury. (*See* Appellants' Reply Brief of Appellants/Respondents, pp. 2-8).

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

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April 9, 2013

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellants' Reply Brief of Appellants/ Respondents to Brief of Respondent S.C. Home Builders complies with Rule 211(b), SCACR.

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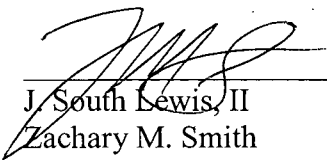
I certify that I served the Appellants' Reply Brief of Appellants/Respondents to Brief of Respondent S.C. Home Builders, on April 9, 2013, by depositing a copy of it in the United State Mail, postage prepaid, addressed to Kathryn Williams, Esquire, 619 N. Main Street, P.O. Box 10693, Greenville, South Carolina 29603 and Andrew D. Smith, Esquire, 330 East Coffee Street, Greenville, South Carolina 29601.

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