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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2023-001437

Daniel Hayden, Employee, Appellant,

vs.

Riverside Transport, Inc., Employer, and
First Liberty Insurance Corp., Carrier..... Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE SC WORKERS' COMPENSATION COMMISSION ERR IN CONCLUDING THAT THE APPELLANT FAILED TO PRESENT SUFFICIENT EVIDENCE TO SHOW HE SUFFERED AN L1 COMPRESSION FRACTURE OF HIS SPINE?
2. DID THE SC WORKERS' COMPENSATION COMMISSION ERR IN ADMITTING INTO EVIDENCE, OVER APPELLANT'S OBJECTION, RESPONDENTS' EXHIBIT B?
3. DID THE SC WORKERS' COMPENSATION COMMISSION ERR IN USING RESPONDENTS' EXHIBIT B TO MAKE CONCLUSIONS IN REGARD TO PURPORTED PAYMENTS MADE UNDER AN ARKANSAS WORKERS' COMPENSATION CLAIM?

STATEMENT OF THE CASE

The Appellant was involved in an August 20, 2018 incident, when he was attempting to exit his truck, his foot slipped, and he stepped down awkwardly and injured his low back. The incident occurred in Colorado. The Appellant was provided medical treatment and temporary total disability benefits through a workers' compensation claim in Arkansas, where the employer is domiciled. He requested a hearing before the SC Workers' Compensation Commission, seeking additional benefits.

At the January 5, 2022 hearing, the Appellant argued that the location of his employment was in South Carolina. He sought a finding of compensability of the claim and a determination of permanency to the back.

The Respondents contended that per the Appellant's employment contract, he would be provided workers' compensation benefits through Arkansas, where the employer is domiciled and where the Appellant was physically present when hired. Following the August 20, 2018 incident, the Appellant received temporary total disability benefits, permanency benefits, and medical benefits through an Arkansas workers' compensation claim. The Respondents contended that the

Appellant has been paid what he is entitled to through the Arkansas workers' compensation claim and is not entitled to any further benefits in South Carolina.

The Respondents further contended that the Appellant did not satisfy the requirements of S.C. Code § 42-15-10, as he was not hired, injured, or employed in South Carolina. The Respondents also denied that the Appellant established a claim with the SC Workers' Compensation Commission within two years after the August 20, 2018 incident. The first Form 50 in the Commission file is dated March 25, 2021 and was received by the SC Workers' Compensation Commission on March 29, 2021. The Respondents also contended that the Appellant had a pre-existing back condition and did not meet his burden to prove an aggravation of a pre-existing condition under S.C. Code § 42-9-35. Finally, the Respondents contended that the Appellant suffered an intervening accident which breaks the chain of causation. If the claim were found compensable, the Respondents requested a credit for all benefits paid through the Arkansas workers' compensation claim.

In the January 25, 2023 Decision and Order, the Single Commissioner denied the claim on the basis that the Appellant failed to meet his burden to prove entitlement to any benefits under the SC Workers' Compensation Act, failed to meet the statutory requirements of S.C. Code Ann. § 42-15-10, and failed to file a claim within two years as required by S.C. Code Ann. § 42-15-40.

On February 7, 2023, the Appellant filed a Form 30 Request for Commission Review. The SC Workers' Compensation Commission Appellate Panel conducted an appeal hearing on April 17, 2023. The Appellate Panel issued its Decision and Order on August 16, 2023, in which it affirmed the Single Commissioner Decision and Order in part and reversed in part. It found that the Single Commissioner properly admitted Respondents' Exhibit B into evidence, as the SC Workers' Compensation Commission is an "agency" within the meaning of S.C. Code Ann. § 1-

23-310, and thus is subject to the Administrative Procedures Act and the Single Commissioner was within her authority when she determined that the documents included in Exhibit B are relevant and admissible. The Appellate Panel found that the Appellant satisfied the requirements of S.C. Code Ann. § 42-15-10, as his employment is located in South Carolina; found that the Appellant is not time-barred from filing a claim in South Carolina under S.C. Code Ann. § 42-14-50; and found that there is insufficient evidence regarding an aggravation of a pre-existing condition or superseding and intervening accident. The Appellate Panel found that the Claimant is not entitled to an award for permanency to the spine under the SC Workers' Compensation Act and denied all claims for benefits.

The Appellant filed a Notice of Appeal with the SC Court of Appeals on September 11, 2023. The Respondents now timely submit this brief arguing the SC Workers' Compensation Appellate Panel's August 16, 2023 Decision and Order should be upheld as a matter of law.

STATEMENT OF FACTS

The Appellant presented to UC Health in Colorado on August 20, 2018. (R. p. 108). X-rays showed an age-indeterminate compression fracture involving L1 and a sacral cortical deformity at S5 likely representing a fracture of indeterminate age. A lumbar spine CT revealed a 25% compression fracture at L1 of indeterminate age. "Lack of paraspinal stranding suggests subacute to older age." (R. p. 109). The Appellant was treated at Doctors Care on August 27, 2018, for an L1 compression fracture and multiple degenerative changes causing nerve entrapment. (R. p. 110). He was referred to neurological surgery based on his injuries. (R. p. 112). The authorized treating physician was Dr. Matthew Brown, though none of his records were submitted into evidence for the January 5, 2022 hearing before the Single Commissioner.

The Appellant had an independent medical evaluation with Dr. Donald Johnson of Southeastern Spine Institute on August 7, 2019. (R. p. 63). Dr. Johnson's report notes that the Appellant's past back history was negative, and he did not have any records from his treating physician. (R. p. 63). Dr. Johnson assigned a 13% whole person impairment, or a 17% regional impairment to the lumbar spine. (R. p. 64). He did not assign any permanent work restrictions or recommend any future medical treatment.

Dr. Owen Kelly performed a medical records review on April 19, 2021. (R. p. 135). He assigned 7% impairment to the whole person based on the AMA Guide 4th Edition for Arkansas. (R. p. 136). Dr. Kelly completed a questionnaire dated December 15, 2021 on which he opined that his 7% impairment rating is for the whole body. (R. p. 132). At the January 5, 2022 hearing, the Single Commissioner ruled that Dr. Kelly's questionnaire was admissible as the corresponding medical records were submitted into evidence. (R. p. 176, lines 23-24).

Following the August 20, 2018 incident, a workers' compensation claim was opened pursuant to Arkansas workers' compensation law, as the employer is domiciled in Arkansas. Upon his hire, the Appellant signed a document on June 24, 2014, which outlined that any compensable job injuries would be covered under the State of Arkansas, and that this policy would apply even if the employee resided in another state or if the accident occurred in another state. (R. p. 141). The Appellant received thirteen (13) weeks of temporary total disability benefits, or \$8,749.00, and received thirty-one and 43/100 (31.43) weeks of permanent partial disability benefits, or \$15,908.13. (R. p. 134). The Appellant's medical treatment was paid through the Arkansas workers' compensation claim. (R. p. 134). At the January 5, 2022 hearing, the Single Commissioner ruled that the records related to the Arkansas workers' compensation claim were relevant and there was certification as to the completeness and accuracy of the Arkansas Workers' Compensation

Commission form on page 59 of Exhibit B. (R. p. 180, lines 20-23). The Single Commissioner further ruled that the documents in Exhibit B were admissible and relevant, as the Appellant was treated in Arkansas and provided temporary total disability, permanency, and medical benefits through an Arkansas workers' compensation claim. (R. p. 180, lines 20-23).

STANDARD OF REVIEW

The Administrative Procedures Act (“APA”) establishes the standard for judicial review of decisions of the Workers’ Compensation Commission. Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). Upon review, appellate courts have the power to reverse or modify a decision if the findings and conclusions of the administrative agency are affected by an error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, arbitrary or capricious, characterized by an abuse of discretion, or a clearly unwarranted exercise of discretion. Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000). Under the APA, an appellate court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but it may reverse for errors of law. Bentley v. Spartanburg County, 730 S.E.2d 296, 398 S.C. 418 (S.C. 2012) (citing S.C. Code Ann. § 1-23-380(5)). Specifically, “[i]n workers' compensation cases, the Appellate Panel is the ultimate fact finder.” Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (S.C. 2000) (citing Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613 (1986)). “The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission.” Id. (citing Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969)). It is not the task of the appellate court to weigh the evidence as found by the Full Commission. Id. (citing Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E.2d 590 (1981)).

The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Frame v. Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004). This Court must affirm the findings of fact made by the Full Commission if they are supported by substantial evidence. Jordan v. Kelly Co., 381 S.C. 483, 486, 674 S.E.2d 166, 168 (2009). Substantial evidence is neither a mere scintilla of evidence, nor evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E.2d 272 (2004). Thus, substantial evidence is a lesser standard than by a preponderance of the evidence. Id.

ARGUMENT

I. THE SC WORKERS' COMPENSATION COMMISSION APPLIED THE APPROPRIATE LEGAL STANDARD AND CORRECTLY DETERMINED APPELLANT WAS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS.

The record and the Decision and Order show that the SC Workers' Compensation Commission considered the record as a whole and reached a reasonable conclusion based on all of the evidence submitted by both parties. Contrary to the arguments of Appellant, it did not commit any error of law in this matter.

The evidence in the record reflects that a lumbar CT performed at UC Health on August 20, 2018 revealed an age-indeterminate compression fracture and that "lack of paraspinal stranding suggests subacute to older age." (R. p. 109). Exactly three months later, on November 20, 2018, the Appellant underwent a Department of Transportation (DOT) physical and denied any neck or back problems. (R. p. 117). His physical examination, including the examination of his back/spine, was normal. (R. p. 118). He also underwent a DOT physical on October 27, 2020,

again denied any neck or back problems, and again had a normal physical examination of his back/spine. (R. pp. 122-123). On both of the DOT physical forms, the Appellant signed a certification “that the above information is accurate and complete. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner’s Certificate, that submission of fraudulent or intentionally false information is a violation of 49 CFR 390.35, and that submission of fraudulent or intentionally false information may subject me to civil or criminal penalties under 49 CFR 390.37 and 49 CFR 386 Appendices A and B.” (R. pp. 117, 123).

The only medical record submitted by the Appellant at the hearing before the Single Commissioner was a one-time independent medical evaluation performed by Dr. Donald Johnson at Southeastern Spine Institute in Mount Pleasant, which is more than two hours from the Appellant’s home in Lexington. Dr. Johnson assigned no permanent work restrictions and recommended no future medical treatment. He assigned an impairment rating and indicated that “[t]his should not be confused with disability.” (R. p. 64). The complaints voiced to Dr. Johnson are inconsistent with the Appellant’s DOT physicals, which he certified were accurate and complete. The Appellant returned to work full duty in November 2018 and has been working full duty since that time. At the time of the hearing before the Single Commissioner, the Appellant had not had any medical treatment related to his claim in the last two and a half years. (R. p. 217, line 23).

Had the SC Workers’ Compensation Commission found that the Appellant sustained a compensable injury, the greater weight of the evidence supports a finding of fact and conclusion of law that he did not sustain any permanent impairment, thus is not entitled to any benefits under the Act, beyond what he already received through the Arkansas workers’ compensation claim.

II. THE SC WORKERS' COMPENSATION COMMISSION APPLIED THE APPROPRIATE LEGAL STANDARD AND CORRECTLY ADMITTED INTO EVIDENCE DOCUMENTS CONTAINED IN RESPONDENTS' EXHIBIT B.

The SC Workers' Compensation Commission is an "agency" within the meaning of S.C. Code Ann. § 1-23-310, and thus is subject to the Administrative Procedures Act. "'Agency' means each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases." S.C. Code Ann. S 1-23-310. As stated in S.C. Code Ann. § 1-23-330, "[i]rrelevant, immaterial or unduly repetitious evidence shall be excluded. Except in proceedings before the Industrial Commission [SC Workers' Compensation Commission] the rules of evidence as applied in civil cases in the court of common pleas shall be followed." The Single Commissioner correctly determined that the documents included in Exhibit B are not irrelevant, immaterial, or unduly repetitious. Thus, she correctly found them to be admissible. There is no legal basis for their inadmissibility or any evidence to suggest that the documents in Exhibit B are inaccurate. The Appellant provided hearing testimony that he received bi-weekly temporary total disability checks and one larger check upon his release from care. (R. p. 213, lines 21-23). This is consistent with the information contained in Exhibit B.

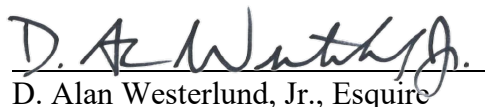
SC Workers' Compensation Commissioners are given the authority and latitude to make determinations of evidentiary admissions and place weight on said evidence as they see fit. The Single Commissioner was within her authority to admit Exhibit B into evidence and was correct in determining that the documents contained in Exhibit B are relevant, material, and not unduly repetitious. The SC Workers' Compensation Commission was correct in affirming this.

CONCLUSION

Based on the foregoing, this Court should affirm the SC Workers' Compensation Commission's Decision and Order.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

A handwritten signature in black ink, appearing to read "D. Alan Westerlund, Jr.", is written over a horizontal line.

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CERTIFICATE OF COUNSEL

I certify that the Final Brief of Respondents complies with SC Appellate Court Rule 211(b).

March 13, 2024



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