

MULLIS LAW FIRM

1229 ELMWOOD AVENUE
THE HALTIWANGER HOUSE
P.O. Box 7757
COLUMBIA, SOUTH CAROLINA 29202-7757
Office (803) 799-9577 • Fax (803) 254-8956

PAMELA R. MULLIS
ATTORNEY AT LAW

J. MARVIN MULLIS, JR.
1940 - 2012

June 28, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Dear Ms. Kitchings:

Please find enclosed the Amended Notice of Appeal on behalf of Claimant-Appellant along with proof of service. The filing fee, the filing fee and Order on Appeal were included with the original filing.

Please do not hesitate to contact me should there be any questions or concerns regarding this communication.

Sincerely,



Frank A. Barton

FAB/mcr

Enclosures

Cc: George Gallagher
SC Workers Compensation Commission
Beverly Robinson

RECEIVED

JUL 02 2013

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION**

W.C.C. No. 1012696

Beverly A. Robinson

Appellant,

v.

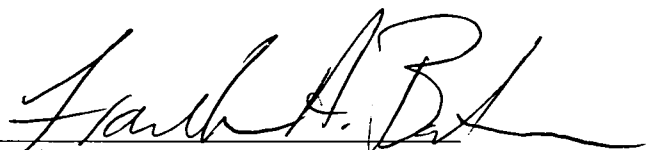
The Home Depot U.S.A., and
New Hampshire Insurance Co.

Respondents

AMENDED NOTICE OF APPEAL

Beverly A. Robinson appeals the decision of the South Carolina Workers' Compensation Commission dated May 29, 2013, upon the attached amended grounds which are incorporated by reference. Counsel for Appellant received a copy of the decision on May 29, 2013.

Respectfully submitted,


Frank A. Barton
Mullis Law Firm
P.O. Box 7757
Columbia, SC 29202
(803) 799-9577
Attorney for Appellant.

Other Counsel of Record:
George Gallagher, Esquire
MG&C
P.O. Box 12519
Columbia, SC 29211
Attorney for Respondents

RECEIVED

JUL 02 2013

SC Court of Appeals

Amended Grounds for Appeal
Beverly A. Robinson v. The Home Depot USA

1. The Commission erred in ruling that Claimant was limited to an award of benefits under the scheduled injury section, § 42-9-30, pursuant to Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960), where, to the contrary, Claimant was entitled to establish greater disability through multiple injuries, including those to her back and legs.

2. The Commission erred in ruling that Claimant was limited to receiving benefits under Section 42-9-30 pursuant to Singleton, where the evidence presented established that Claimant's injury was not confined to a single scheduled member, her back, but that her legs, particularly the left, were also made symptomatic, deficient, and inefficient in light of:

- a) The employer's doctor, Dr. Storick's diagnosing "low back pain, left leg pain, left lumbosacral radiculities, and L4-5 degenerative disc disease;"
- b) Dr. Storick's rating of permanent partial impairment at 5% whole person impairment to the lumbar spine "based on her ongoing back and left leg pain;"
- c) Dr. Storick's opinion that "the majority of Ms. Robinson's symptoms seem to be more radicular in origin;"
- d) Dr. Storick's observation of Claimant's pain and numbness "all the way down her left leg to the toes;"
- e) Dr. Storick's observation that Claimant's gait was "antalgic, favoring the left leg."

3. The Commission erred in ruling that Claimant was limited to receiving benefits under the scheduled injury section, § 42-9-30, pursuant to Singleton where the evidence presented established that Claimant's injury was not confined to the scheduled member, her back, but that her legs, particularly the left leg, were also affected and made symptomatic, deficient, and inefficient by her injury and where this loss contributed to her disability where Claimant's work operating a standup forklift required her to place pressure on her weakened and numb left leg with resulting pain and instability.

4. The Commission erred in ruling that Claimant was limited to receiving benefits under Section 42-9-30 pursuant to Singleton where the evidence presented established that Claimant's injury was not confined to the scheduled member, her back, but her legs were also affected and made painful, weak, and numb, where the policy behind allowing a claimant to proceed under the general disability sections allows for a claimant whose injury, while falling under the scheduled member section, nevertheless affects other parts of the body and warrants providing the claimant with the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section." See Brown v. Owen Steel Co., 316 S.C. 278, 450 S.E.2d 57 (Ct.App.1994)(when a scheduled injury is accompanied by additional complications affecting another part of the body, the claimant may seek benefits for general disability).

RECEIVED

JUL 02 2013

SC Court of Appeals

5. The Commission erred in ruling that Claimant was limited to receiving benefits under Section 42-9-30 pursuant to Singleton as a result of the Commission's erroneously ruling that, in order to constitute another body part so as to allow a worker to establish general disability, the other body part must itself have been directly injured in the work accident.

6. The Commission erred in finding that Claimant was entitled only to benefits for a scheduled injury upon the Commission's failing to evaluate the claim in accordance with its duty to evaluate a claim in order to award to the injured worker the greater rather than the lesser amount of benefits available.

7. The Commission erred in failing to find Claimant totally and permanently disabled where the evidence established that, due to her injuries, she has been limited to restricted light, if not sedentary, duty and found unable to return to the medium to heavy manual labor by which she was able to earn and receive wages at the time of her work injury.

8. The Commission erred in failing to find Claimant totally and permanently disabled where the evidence established that she is unable to perform services other than those that are so limited in quality, dependability, or quantity that no reasonably stable market exists for them.

9. The Commission erred in failing to find that Claimant was entitled to benefits for total and permanent disability pursuant to Section 42-9-10 where she is unable to earn wages performing the work she was doing at the time of her injury and she is not qualified by education, training, or experience for any other employment.

10. The Commission erred in failing to find that Claimant was entitled to benefits for total and permanent disability where the employer's doctor imposed permanent work restrictions of no lifting, carrying, pushing, or pulling greater than 20 pounds upon this uneducated warehouse worker with a work history devoted to manual labor

11. The Commission erred in failing to find Claimant totally and permanently disabled as the result of the Commission's failing to apply the accepted definition of total and permanent disability that there is not a reasonable market for the Claimant's services, and as the result of the Commission's failing to recognize that total disability does not require complete helplessness, but that the inability to perform common labor is total disability for one who is not qualified by training or experience for any other employment.

12. The Commission erred in failing to find Claimant totally and permanently disabled where the Commission particularly indicated in Finding of Fact #5 that its conclusion that Claimant was not disabled as the result of her injuries was based on the fact that Claimant was restricted from lifting, carrying, pulling or pushing more than 20 pounds but that such restriction left Claimant qualified for light duty employment so that Claimant was not entitled to disability benefits because she could perform light duty work. This decision is unsupported by the evidence where there was no evidence or opinion submitted to suggest that this warehouse worker was capable of anything more than common labor or that she was qualified by education, training, or experience to earn wages by performing light duty work.

13. The Commission's failing to find Claimant totally and permanently disabled in reliance on the fact that Dr. Storick had restricted her to light duty is legal error and inconsistent with the Act under which the inability to perform common labor constitutes total disability for one who is not qualified by training or experience for any other employment.

14. The Commission erred in failing to find claimant totally and permanently disabled; this ruling is unsupported by substantial evidence given the expert vocational opinion that, based on her significant work restrictions, Claimant is either unable to perform substantial work or she is unhireable given that no stable labor market exists for an individual so significantly restricted. In contrast, there was no evidence submitted suggesting the existence of gainful employment which Claimant could perform or of jobs that exist in any reasonable number available to Claimant given the restrictions imposed on this worker with a work history devoted to manual labor that lacks the experience, training, or education to earn wages performing lighter work.

15. The Commission erred in failing to find Claimant totally and permanently disabled as the result of the Commission's erroneously discounting and disregarding the disabling effects of Claimant's prescribed medications given Dr. Storick's stated opinion that a worker would be "in a cloud" and unable to function or perform her job as a side effect of taking the medications prescribed for this worker.

16. The Commission erred in awarding benefits only for specific loss to the claimant's back and in finding only a 15% loss of use to the back where such award is unsupported by the evidence and fails to fairly address the disabling, near total loss of use of Claimant's back to perform the medium to heavy manual labor she performed throughout her working life and which she was performing at the time of the work accident.

17. The Commission erred in awarding benefits only for specific loss to the claimant's back and in finding only a 15% loss of use to the back where such award is unsupported by the evidence, fails to differentiate between impairment and disability where it is established as a matter of law under the Act that the degree of loss of use can in no way be limited to the percentage of medical impairment, and fails to fairly address the disabling, near total loss of use of Claimant's back to meet her personal, social, and occupational obligations in light of the fact that, as the result of her injuries, Claimant is wholly unable to return to work and also unable to make her bed, do laundry, or drive a car.

18. The Commission erred in failing to award benefits for total and permanent disability or in the alternative, benefits for permanent partial disability or, in the alternative, erred in failing to award benefits for substantial permanent partial disability, greater than 50% loss of use to the back under Section 42-9-30 (21) and substantial permanent partial disability to the left leg under Section 42-9-30(16).

19. The Commission erred in failing to award benefits for the disabling condition of Claimant's left and right legs despite the undisputed evidence of debilitating pain, weakness, and numbness to the legs and where, by prior Commission Order, the injuries to Claimant's back and left leg were found compensable.

20. The Commission erred in finding that Claimant reached MMI as of February 1, 2012, and in granting the employer/carrier credit for any payments after that date where Claimant has yet to reach MMI.

21. The Commission erred in failing to order continuing temporary total disability benefits where Claimant was terminated while on light duty and where her restrictions thereafter have continued and increased.

22. The Commission erred in finding that Claimant had reached MMI where this decision is unsupported by substantial evidence where, based on Dr. Storick's MMI statement which relied on the fact that the treatments he had provided had not been successful and on the basis of the doctor's indication that his MMI finding was reached regardless of the objective test results showing degenerative changes at L4-5 and L5-S1 and a broad based disc bulge at L4-5 which the doctor believed caused narrowing of the foramen.

23. The Commission erred in finding that Claimant had reached MMI on the basis of Dr. Storick's MMI statement despite Dr. Storick's deposition testimony conceding that he could not answer the question of whether Claimant needed further medical care.

24. The Commission erred in stopping Claimant's weekly benefits where Claimant had not reached maximum medical improvement but, instead, her condition continued to worsen and given that Defendants, despite having asserted that Claimant had reached MMI, authorized and referred her for further treatment with Dr. Holbrook.

25. The Commission erred in finding that Claimant had reached MMI on the basis of Dr. Storick's 2/1/2012 equivocal indication of MMI, where Dr. Storick did not explicitly state that there were no further medical procedures or treatments in existence reasonably likely to decrease Claimant's disability or her period of disability and where; despite his earlier indication that Claimant was at MMI, Dr. Storick then stated to the contrary that he could not say whether Claimant needed further medical evaluation and/or treatment.

26. The Commission erred in affirming the Hearing Commissioner's finding of MMI which relied on Dr. Storick's equivocal indication that Claimant had reached MMI despite the fact that directly after the hearing before the Hearing Commissioner at which Defendants asserted that Claimant had reached MMI and needed no further medical evaluation or care, relying on Dr. Storick's MMI statement, Dr. Storick indicated that Claimant would benefit from a referral to an orthopedic surgeon and referred Claimant to orthopedic surgeon, Dr. Holbrook, for further evaluation and treatment which was authorized and provided by Defendants.

27. The Commission erred as a matter of law and fact in finding that Claimant was at MMI and in permitting Defendants to stop payment of temporary benefits where the MMI conclusion is against the greater weight and preponderance of the evidence given that Claimant has not reached maximum medical improvement but instead she remains under the continued care of Defendants' doctors for her compensable injuries and such continued medical care and evaluation with Dr. Holbrook is not disputed, but authorized and provided by Defendants.

28. The Commission erred in failing to take notice of the judicially cognizable fact that Dr. Storick referred Claimant to Dr. Holbrook for further evaluation and treatment where this undisputable fact was placed before the Commission by way of Claimant's October 1, 2012, filing with the Commission in this case, W.C.C. No. 1012696, to which Dr. Holbrook's report was attached.

29. The Commission erred in affirming the finding of MMI upon erroneously failing to take notice of the undisputed fact that Dr. Storick, despite his initial indication of MMI, proceeded to opine that Claimant would benefit from further evaluation and treatment and to refer her to an orthopedic surgeon whose evaluation and treatment were authorized by Defendants, given that undisputed evidence of the referral to Dr. Holbrook and Dr. Holbrook's testing, opinion, and recommendations were filed with the Commission and properly before the Panel given that under the Act and the APA, the Appellate Panel may take notice of judicially cognizable facts, including taking notice of the Commission's records, files, and proceedings for all proper purposes including undisputed facts established in its records.

30. The Commission erred in interpreting the Act in favor of the Employer/Carrier over the admittedly injured worker where it is well established that the Act is entitled to a liberal construction in favor of the injured worker for her protection and support in furtherance of the beneficent, remedial, and humanitarian purposes for which it was designed.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 1012696

Beverly A. Robinson,

Appellant,

v.

Home Depot, Inc. and
Liberty Mutual Insurance Co.,

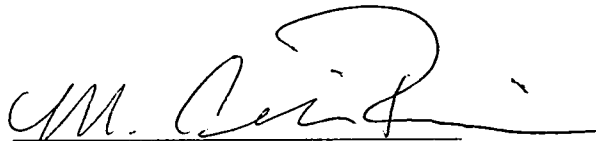
Respondents.

CERTIFICATE OF SERVICE

I, the undersigned, of the MULLIS LAW FIRM (attorney for Appellant) do hereby certify that I have served the Appellant's Amended Notice of Appeal this 28th day of June 2013, by regular mail with proper postage affixed and addressed to the following:

SC Workers' Compensation Commission
Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715

George Gallagher, Esquire
MG&C
P.O. Box 12519
Columbia, SC 29211



M. Celia Robinson
MULLIS LAW FIRM
P.O. Box 7757
Columbia, SC 29202
(803) 799-9577

RECEIVED

JUL 02 2013

SC Court of Appeals