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SC Court of Appeals

STATE OF SOUTH CAROLINA

APPEAL IN A CIVIL CASE

In The Court of Appeals
In The Supreme Court

WORKERS COMPENSATION COMMISSION PANEL:

Cynthia C. Dooley, Chair
T. Scott Beck
Melody L. James

WCC No. 1923480

Appellate Case No. 2023-001264

Takara L Stewart

Claimant/Appellant,

South Carolina CVS Pharmacy, LLC,
Employer and
XL Insurance America Inc.,
Carrier

Defendants/Respondents

Motion
New Evidence

Appellants Motion to present new evidence pertinent to the record on appeal to the Full Commission Appellate Panel. The following pieces of evidence were derived from the initial claim, have been shared with the respondents, have been made accessible through representation and filings per the lower courts. The case transpired and the new evidence is foundationally essential and or admissible in the support continuity of the case.

April 24, 2024



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Pro Se

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Pursuant to Rules 240, 210 and 269, the undersigned Pro Se Appellant, hereby petitions to move this Court for an order granting permission to present new evidence pertinent to the record on appeal to the Full Commission Appellate Panel. The following pieces of evidence were derived from the initial claim, have been shared with the respondents, have been made accessible through previous representation and filings per the lower courts. The case transpired and the new evidence is foundationally essential and or admissible in support continuity of the case. The new evidence supports the South Carolina Codes Fact Findings of Law: 42-1-160, 42-15-20, 42-15-60, 42-1-130, 42-1-140, 42-9-35 and 42-9-10. The new pieces of evidence are as follows: (a) Dr. Hicks-Beckum Psychology Referral, (b) Psychology Consultation and Debrief, (c) Psychology Estimate requested by Respondents and (d) Admission of Defendants Settlement Offers.

ARGUMENTS

A. Dr. Hicks-Beckum Psychology Referral

B. Psychology Consultation and Debrief

In support of the Fact Findings of Law, supported by the South Carolina Code: 42-1-160 and 42-9-35. The admission of said evidence solidifies the medical certainty of Appellants attending physician, Dr. Ashley Hicks-Beckum. The insertions below are just a few of Ms. Yarbrough's preponderance of evidence, broad and unsupported medical certainty contradictions for which she contends that the attending physician's medically certain opinion isn't expert sufficient in level of rising above speculation and conjecture. Dr. Ashley Hicks-Beckum's, a general practitioner, for which defense's highly subjective claim per medical certainty credibility is disrespectful defense to the many years spent to acquire Doctoral education and licensing. Dr. Ashley Hicks-Beckum's medically certain opinion is valid and clearly stated.

Q: Do you have a reason [sic] to reasonable degree of medical certainty as to whether

this incident that she has described in the CVS would have aggravated a pre-existing condition?

A: Yes; of course.

A: “.....Yes

Q: Okay. And do you have any opinions to a reasonable degree of medical certainty as to whether the complaints that she made to you when she saw you were the result of that aggravation?

A: Yes

(APA #11 Depo Pg. 17).

Clearly stated, inserted and referenced again by citation per the record on appeal:

“.....do you have an opinion to a reasonable degree of medical certainty as to whether this incident that she has described in the CVS would have aggravated a pre-existing condition?” “Yes, of course.” (F.C. Tr. Pg. 7:21-25, Pg. 8:1) “.....do you have any opinions as to a reasonable degree of medical certainty as to whether the complaints that she made to you when she saw you were the result of that aggravation.” The answer is “Yes, she is.” (F.C. Tr. Pg. 8:1-6).

The deposition of Dr. Ashley Hicks-Beckum should be weighted, revered and or substantiated just as clearly as both responses are stated in regards to her certainty. Who is defense to question her opinion in support of defense-centered ulterior motives?

Surely, however, the phrase certainty is not semantically empty. “Certainty” has clear epistemic connotations and implications for the witness’s opinion, both in terms of his own state of mind, and in terms of the empirical support the witness has for his opinion in the form of reasonably relied upon data, and sound inferences to a reliable conclusion. Subjectively, the witness who utters the phrase acknowledges that he is not speculating and that he believes that

his opinion satisfies professional standards for claims of knowledge. A witness who qualifies his opinion with these “magic words” communicates his willingness to put his professional reputation on the line, and to defend the opinion before his peers. Objectively, the phrase conveys the notion of reliable knowledge. To be sure, human beings may not enjoy “certainty” in their knowledge of empirical propositions, but the “reasonable” qualifier makes the entire phrase meaningful and important. (Schactman, 2011).

The opinion shouldn't be twisted and or leveraged per unjustifiable defense motives. What makes one credentialed, medical diagnosis opinion credible over another medically diagnosed opinion? Dr. Snipes versus Dr. Ashley Hicks-Beckum. The Appellants attending physician is more credible, satisfying professional standards over a defense-hired- service based, paid assessment to substantiate defense's, indefensible, unjustified theory by way of an unprofessional first time-one time video session with Dr. Snipes. There is no defense. Both Doctors hold medical degrees yet the attending physician has built rapport, collected substantial history through physical examinations and administered biological tests as opposed to a defense purported video as an initial examination to substantiate indefensible defense. In most cases psychiatric medical care is administered through primary care physicians as specialized psychiatric care is associated with a stigma of being too costly. The statistics of diagnoses and the administration of mental health care is higher among primary care physicians in comparison to psychiatrists. There are instances where the care is combined through collaboration for more medically preferred results. Again, how is a medical doctor's medically certain opinion not accepted over another medical doctor's medically certain opinion with no history of contact with the patient?

“.....medical evidence means expert opinion or testimony stated to a reasonable degree

of medical certainty. This is not a statutory --excuse me -- this is not a courtesy or preferred language, it's just the statutory requirement established by our legislature. (F. C. Tr. Pg. 6:19-25). If the causation opinion is not clearly stated to a reasonable degree of medical certainty". (F. C. Tr. Pg. 7:1-2).

The use of the term “medical certainty” is a bit obtuse and a pompous defense tactic in hopes of strengthening their defense by presenting a subjective medically certain perspective to pawn a defense-centered, unjustifiable decision. Why wouldn't Dr. Ashley Hicks-Beckum's opinion be considered medically certain? Medically certain enough to prompt her to prescribe psychology referral(s)? She confirmed her opinion on multiple occasions during her testimony. Is the education and licensing not sufficient enough to warrant an opinion for someone she sees per routine care? What defines the “statutory requirement” phrase mean? There isn't a predetermined definition for the “*reasonably medically certain opinion*” phrase moreover its being thrown alongside unsupported defense. Why is it subjectively used in legal proceedings? What are the judicial standards in regards to using the term “medically certain”? Her medically certain opinion is more than ninety-percent accurate as it's based on established rapport and in-depth medical analysis with the victim on multiple occasions. It easy to say there aren't any signs of PTSD when you are being paid for the assessment inasmuch and or synonymous as CVS paying for the indefensible defense of Ms. Yarbrough. This is preponderance of evidence in support of an indefensible opinion, expecting an indefensible verdict such as the reversed record on appeal.

Ms. Yarbrough continues to purport indefensible defense with inconsistent sequencing of the sexual assault events with mockery in the severity of the sexual attack. This is not an act of moral civility. A sexual assault attack painfully induced physically yet still physically and

emotionally anguished. Who actually stops to painfully and mannishly grab someone's cheek of their rear end, tug on it as if there is curiosity of it being real stating "that's a big ole butt, you got a big ole butt"? The perpetrator thinks this is humorous as she walks out of the CVS storefront laughing, completely oblivious of what she has done and who she has assaulted. Totally disrespectful and privileged! The sexual attack was inhumane. One wouldn't be eligible for federal employment carrying out such a horrendous sexual attack as such.

".....without showing any signs of stress, anxiety, depression, trauma, or psychological issues." (F. C. Tr. Pg. 4:22-24).

".....She didn't report any prior molestations to any of her physicians." (F. C. Tr. Pg. 5:9-10).

On the contrary to the purported and unsupported defense on behalf of the respondents in regards to no prior treatment, Dr. Ashley Hicks-Beckum made several prescriptions on behalf of the workplace sexual assault: oral sedatives, adaptive meditation, and several clinician referrals presented over the course of the W.C.C 1923480 claim to date. Dr. Ashley Hicks-Beckum was well aware of the matter at hand and was extremely coherent and effective in creating a space to actually open up about the workplace sexual assault including but not limited to the background information in regards to the present effects. During the relocation from Florence, SC back to Savannah, Georgia there were attempts to fulfill those prescriptions personally, by way of limited resources (i.e., child support income). All of the attempts to remedy the effects of the workplace sexual assault attack were exhausted after the CVS Employee assistance Program (EAP) failed to administer successful treatment due to the cancellation of office visits by the EAP appointed counselor; Linda Davis. (APA #3)

".....the Claimant still has to produce requisite medical evidence under 42-1-160. In

medically complex cases an employee shall establish the medical evidence that the injury arose in the course of employment.” (F. C. Tr. Pg. 6:13-18).

The medically prescribed Psychology Referral and Psychology Consultation with a Debrief would be deemed requisite medical evidence under 42-1-160 by way of the expertise and medically certain opinion of my attending physician Dr. Ashley Hicks-Beckum. The projected manipulation and coercion used in questioning a highly credentialed Doctor’s “reasonable degree of medical certainty” is another far-fetched, indefensible purported defense tactic. Dr. Ashley Hicks-Beckum is an expert and her opinion is expressed and or implied to a reasonable degree of doctoral and attending physician certainty

“.....42-1-160, the 42-9-35 says this, in an accident -- if you have an accident which aggravated a preexisting condition the statute says that the employee shall again establish by that medical evidence that either the injury aggravated the pre-existing condition or the pre-existing condition aggravated the injury. And again, you need to establish by an expert opinion stated to a reasonable degree of medical certainty.” (F. C. Tr. Pg.7:3-13)

C. Psychology Estimate Requested By Respondent

A covered employee at the time of being sexually attacked, per the *S. C Code 42-1-130*, CVS employer was covered under the *S.C Code 42-1-140*. The respondents were provided a copy of the prescribed psychology referral. Ms. Yarbrough was notified about the Psychology referral and later appointed and or administered consultation. A copy of the consultation debrief was forwarded to the respondents for record. From the respondent, a request via email for an estimate of the Dr. Hicks-Beckum prescribed and medically preferred treatment. To initiate a request as such, solidifies the direct implication the respondents concur with *S.C Code 42-9-10* regarding the entitlement to temporary total benefits for the 24.5714 week period of May 18,

2020 through November 5, 2020 at the weekly rate of \$172.31; totaling \$4,224.01. This would include *S.C Code 42-15-60* which validate the administration of future adequate and proper care at the hands of Andrea Hicks-Beckum and or any additional referred psychological treatment.

D. Admission of Defendants Settlement Offers

Socioeconomic mockery persists with the financially hardened stigma of offering monies in hopes one would ignore the underlying medical issues, the effects of the sexual assault, leveraging financial shortfalls, dismiss CVS of the admitted liability and just opt to take the money. Inadvertently coinciding with the false characterization per the respondents' claim of for financial hardship and or workplace sexual assault effect(s) credibility.

"Claimant has a history of financial problems". (May 8, 2023; Appellate Panel Decision and Order Pg.6 ¶ 21).

"really have any....working income coming in". (Single Commissioner Hearing Tr. Pg. 28:16-25).

The decision to work part-time at CVS and or where the sexual assault attack took place while attending Francis Marion University of Florence, SC full time, is a significant difference in previous Federal civil service employment pay of \$4500.00 a month nevertheless employment began at the age of fifteen (15). All of which was a part of the career advancement plan that was horrendously disrupted by the sexual assault attack during the CVS scheduled shift.

"...Claimant, a divorced mother, indicated she was having a "rough time" and that it was "not easy" having to work, attend school, raise a child and pay her expenses. (Single Commissioner Hearing Tr. 52:21-53:7).

Irrelevant, socioeconomic mockery, unsupported defense purported to sway a defense-centered decision without regard, accountability in its employee sexual assault justice.