

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

RECEIVED
NOV 22 2019
SC Court of Appeals

W.C.C. FILE NO: 1613950

Mary Hickman

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

Ruiz Foods

EMPLOYER,

AND

Safety National Casualty Corporation c/o York
Risk Services Group

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on April 29, 2019 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

October 25, 2019

APPEARANCES: Claimant/Appellant represented by Dwight C. Moore, Esquire

Defendants/Respondents represented by J. Brandon Hylton, Esquire

STATEMENT OF THE CASE

The parties were heard by Single Commissioner Avery B. Wilkerson, Jr., at a hearing on September 24, 2018 in Florence, South Carolina. As a result of the hearing, the Single Commissioner issued an Order filed on January 4, 2019 from which the Claimant appealed.

Within the statutory period, Claimant filed for an Application for Review in this case setting her assignments of alleged err. A copy of the Application for Review was properly served upon all parties.

On a Form 30, Request for Review, Claimant asserts nine errors, as follows:

1. Whether or not the Appellate is entitled to continuing temporary total disability compensation for the compensable injuries she sustained on August 22, 2016.
2. Whether or not the injury to Appellate's back is compensable as a continuing temporary total disability.
3. Whether or not injuries to Appellants right arm, right knee, and head are compensable as continuing temporary total disability.
4. Whether or not, in the alternative, Appellate is entitled to permanent partial disability compensation for any or all of the injuries she suffered on August 22, 2016.
5. Whether or not Appellate's current back condition is related to her compensable accident on August 22, 2016.
6. Whether or not the allegations in item nine in the Form 50 filed by the Appellate on June 25, 2018 constitute a request for permanent partial disability finding pursuant to S.C. Code Ann. §42-9-30 (2015) with regard to her injuries.
7. Whether or not, in light of the injuries sustained by the Appellate in the Record of the Case, the testimony of the Appellate is critical.

Pursuant to South Carolina Code of Law Ann. §42-17-50, we, the Appellate Panel, have reviewed the Single Commissioner's Decision and Order and waive the evidence presented at the additional hearing. We have also considered all issues raised in the briefs of the Appellate and Respondent's, as well as arguments held before the Appellate Panel on April 29, 2019.

After careful review, this Appellate Panel of the South Carolina Workers' Compensation Commission, has affirmed in part and reversed in part the Single Commissioner's Decision and Order. As a result, the Appellate Panel issues the following Findings of Facts, Conclusions of Law, and Order.

FINDINGS OF FACTS AND RULINGS OF LAW

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. The Claimant's average weekly wage is \$456.00 with a corresponding compensation rate of \$304.01.
3. The Claimant sustained an admitted injury by accident to her back on August 22, 2016, when the Claimant slipped and fell in the course of her employment.
4. The Defendants provided all appropriate and causally-related medical treatment.
5. Based on the greater weight of the evidence from all doctors including Claimant's IME doctor, any injury to the head, right forearm or shoulder, right knee, or right leg resolved.
6. Claimant provided two different testimonies depending upon who was asking her the questions. Claimant was clear in her answers when asked by her attorney, and unclear when asked by the Defense. Until recently everything had cleared up except her back pain. (Hearing Tr. Pp. 26 Ln. 4-8; Pp.29 Ln. 2-10; Pp. 33 Ln. 15-20; Pp. 55 Ln. 14 – Pp. 56 Ln. 2; Pp. 56 Ln. 19 25; Pp. 57 Ln. 18 – Pp. 58 Ln. 2; Pp. 68 Ln. 18 – Pp. 69 Ln. 3.)

7. Claimant was in an accident prior to her worker's compensation accident and provided different dates based upon who was asking her the question. (Hearing Tr. Pp. 14 Ln. 1-8; Pp. 15 Ln. 1-17; Pp. 40 Ln. 5-24.)
8. Claimant was not honest in her medical history at the independent medical evaluation with Dr. Edwards. (Hearing Tr. Pp. 31 Ln. 3-14; Pp. 40 Ln. 25- Pp. 41 Ln. 2; Pp. 43 Ln. 4-10; Pp. 45 Ln. 4-17.)
9. We do not find the testimony by the Claimant consistent with the medical evidence presented at the hearing. (Hearing Tr. Pp. 55, Ln. 4- Pp. 56 Ln. 2.) We do not find the Claimant to be credible or truthful with her testimony.
10. We give greater weight to Dr. Scott Boyd and Dr. Bill Edwards than we give to Dr. Leonard Forrest's one-time independent medical evaluation conducted on August 15, 2018.
11. We find that maximum medical improvement was reached as of Dr. Edwards' last medical report on September 28, 2017.
12. There are only two impairment ratings in this claim: (a) the first from Dr. Storick, who assigned the Claimant with a 2% whole person for her back injury and suggested pain management as needed; (b) the second from Dr. Forrest, who assigned a 14% impairment rating to the Claimant's back only. Again, we give greater weight to the opinion of Dr. Boyd.
13. Since the moving party did not request a finding of permanent partial disability, we do not determine if any permanent partial disability is owed at this time.

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Workers' Compensation Act, the undersigned make the following Conclusion of Law:

1. Pursuant to S.C. Code Ann. §42-1-40, Claimant had an average weekly wage of \$456.00 and a corresponding compensation rate of \$304.01.
2. Pursuant to S.C. Code Ann. §42-1-160, the Claimant sustained an admitted injury by accident to her back on or about August 22, 2016.
3. Pursuant to S.C. Code Ann. §42-15-60, the Claimant reached maximum medical improvement on September 28, 2017, per the opinion of Dr. Edwards.
4. Pursuant to S.C. Code Ann. §42-9-30, since the Claimant did not make a request for a permanent partial disability finding, we do not determine whether any permanent partial disability award is owed at this time.

ORDER

IT IS HEREBY ORDERED that the Claimant suffered a compensable injury to only her back for which she received all appropriate medical treatment.

IT IS FURTHER ORDERED that Claimant reached maximum medical improvement on September 28, 2017.

IT IS FURTHER ORDERED that Claimant's current condition of her back is unrelated to her compensable accident sustained on August 22, 2016, as Claimant failed to meet her burden of proof.

IT IS FURTHER ORDERED that the Claimant is not entitled to any additional medical treatment.

AND IT IS SO ORDERED.

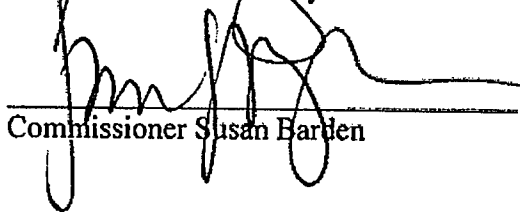


Commissioner Melody James
For the Appellate Panel

WE CONCUR:



Commissioner Aisha Taylor



Commissioner Susan Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on October 28, 2019