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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE FULL COMMISSION
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

APPELLATE CASE NUMBER: 2024-000822

Sonya Parks, Claimant and Appellant,

v.

Cintas Corporation, Employer and Respondent,

and

Farmington Casualty Company, Carrier and Respondent.

REPLY BRIEF OF APPELLANT

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s/Lola Stradford Richey
Lola Stradford Richey
RICHEY AND RICHEY PA
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503 (Office)
(864) 467-0646 (Fax)
lawfirm@richeyandrichey.com
Attorney for Appellant

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ARGUMENT

I. The Commission's Determination Of An Active Pre-Existing Condition Is Not Supported By Substantial Evidence

"Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached." *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999) (citing *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162 (1992)). "Whether there is any causal connection between employment and an injury is a question of fact for the Commission. The Commission's decision must be affirmed if the factual findings are supported by substantial evidence in the record." *Hill v. Eagle Motor Lines*, 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007) (citing *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 159-60, 519 S.E.2d 102, 105 (1999)). "In workers' compensation cases, the Commission is the ultimate fact-finder." *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010) (citing *Jordan v. Kelly Co.*, 381 S.C. 483, 674 S.E.2d 166 (2009)). It is settled that a dormant condition aggravated by a work injury can lead to compensable injuries. *Brown v. R.L. Jordan Oil Co.,* 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987). Specifically, "the right of a claimant to compensation for aggravation of a pre-existing condition arises *only where there is a dormant condition which has produced no disability* but which becomes disabling by reason of the aggravating injury." *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 295, 599 S.E.2d 604, 614 (Ct. App. 2004) (emphasis added) (citing *Hines v. Pac. Mills*, 214 S.C. 125, 140, 51 S.E.2d 383, 390 (1949)).

In this case, the Commission improperly relied on the Appellant's prior diagnosis and recommendation for surgery to conclude that the Appellant's left shoulder condition was active rather than dormant. In doing so, the Commission did not recognize that, at the time of the admitted physical injury, the Appellant's condition was not producing any disability. Likewise, the Commission overlooked key elements of the hearing testimony and deposition evidence,

specifically the statements from Mr. Burton and other coworkers who confirmed that the Appellant never reported or complained of left shoulder pain before June 15, 2022, workplace injury. Further, the Commission's reliance on the mere existence of a surgical recommendation overlooks the substantial evidence showing that the Appellant's left shoulder remained dormant and only became disabling due to the aggravation caused by the workplace injury on June 15, 2022. Additionally, the Appellant's inability to proceed with surgery due to personal factors shows that her condition was manageable and did not impact her work until the June 15, 2022 injury aggravated it into a disabling state. Thus, the record lacks evidence that the Appellant's shoulder condition affected her work performance or necessitated treatment that impacted her work capacity before June 15, 2022. This lack of evidence shows that the Commission's determination conflates diagnosis with an active impairment, which is unsupported by substantial evidence.

Here, the record supports that the Appellant's lifting injury on June 15, 2022 aggravated and activated her left shoulder condition to the point of disability. This interpretation aligns with the South Carolina Workers' Compensation precedent, which holds that a workplace injury that exacerbates a dormant condition renders it compensable. See *Gorodon v. E. I. Du Pont De Nemours & Co.*, 228 S.C. 67, 76, 88 S.E.2d 844, 848 (1955) (where a non-disabling injury is aggravated with resulting disability, such disability is compensable). Thus, the Appellant sustained a compensable injury under South Carolina Workers' Compensation law. Therefore, the Commission's reliance on the Appellant's past medical records, absent signs of actual work impairment, does not meet this evidentiary threshold, making its conclusion unsupported by substantial evidence.

II. The Commission's Dismissal Of The Medical Opinion Of Dr. Smithwick Lacked Substantial Justification

"While the Commission may refuse to accept even uncontradicted medical evidence, it must base its refusal on a valid reason supported by competent evidence in the record. Otherwise, the refusal is arbitrary and capricious and warrants reversal." *Brooks v. Benore Logistics Sys.*, 437

S.C. 376, 384, 879 S.E.2d 1, 5 (Ct. App. 2022) (citing *Baker v. Graniteville Co.*, 197 S.C. 21, 27, 14 S.E.2d 367, 369 (1941)) "If a Commission wishes to enter an award contradicting the medical testimony, it must take care to show in the record the valid competing evidence or considerations that impelled it to disregard the medical evidence. Failure to do so may lead to reversal both of denials and awards of compensation.").

In this case, the Commission's treatment of Dr. Smithwick's opinion was far from the "careful and measured evaluation" that Respondent claims. While the Single Commissioner referenced Dr. Smithwick's findings, the Commission improperly dismissed his professional judgment without a substantive counter-assessment, thus undermining the evidentiary balance. This dismissive approach overlooks Dr. Smithwick's detailed clinical evaluation, which was based on a thorough medical examination of her left shoulder condition. The Commission relied solely on a perceived lack of knowledge of prior history to dismiss Dr. Smithwick's opinion, yet no alternative medical evidence contradicts his findings. Despite evidence that the Appellant was on full job duty and performed her work without any difficulties before June 15, 2022. (Mr. Burton Dep. Tr. 11:16-23).

Although the Commission has discretion in weighing evidence, it overlooked that the Respondents did not present any countervailing evidence to discredit Dr. Smithwick's assessment of the aggravation of the Appellant's left shoulder condition. See *Tiller v. Nat'l Health Care Ctr.*, 334 S.C. 333, 339-40, 513 S.E.2d 843, 846 (1999) ("the Commission is given the discretion to weigh and consider all the evidence, both lay and expert, when deciding whether causation has been established"). Without such evidence, the Commission's grounds for disregarding Dr. Smithwick's conclusions are insufficient to undermine his professional assessment of the injury's impact on the Appellant's shoulder. Absent conflicting medical or lay opinions, Dr. Smithwick's assessment should have been given significant weight, reflecting the substantial aggravation of the Appellant's condition due to the workplace injury on June 15, 2022.

III. The Issue Of Repetitive Job Duties Was Properly Preserved As A Basis For Compensability

The Respondents' assertion that the Appellant failed to preserve the issue of her job duties being repetitive in nature as a basis for compensability is unfounded. In South Carolina, "a party is not required to use the exact name of a legal doctrine in order to preserve the issue." *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011). "Nonetheless, the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." *Id*. (citation omitted). "When an issue is not specifically set out in the statements of issues, the appellate court may nevertheless consider the issue if it is reasonably clear from an appellant's arguments." *Id*. See, *Eubank v. Eubank*, 347 S.C. 367, 373 n.2, 555 S.E.2d 413, 416 (Ct. App. 2001) (finding the statement of issue, when read in conjunction with the argument, sufficiently raised the issue to the court). Moreover, "Section 42-1-172 requires causation of a repetitive trauma injury to be proven by 'medical evidence,' which is defined as 'expert opinion or testimony *stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician*.'" *Brooks v. Benore Logistics Sys.*, 442 S.C. 462, 481, 900 S.E.2d 436, 446 (2024) (quoting S.C. Code Ann. § 42-1-172(B)-(D) (original emphasis).

Here, throughout the proceedings, the Appellant consistently highlighted the repetitive nature of her work as central to understanding the aggravation of her shoulder condition. This issue was raised in both her testimony and in medical opinion or testimony submitted into evidence, explicitly connecting the repetitive nature of the Appellant's job duties—such as lifting, reaching, and handling garments—to the aggravation of her shoulder injury.

Moreover, South Carolina law does not require each specific aspect of a claim to be isolated and re-asserted at every procedural stage for it to be preserved. Rather, the issue must be presented with sufficient clarity to highlight the precise nature of the alleged error, allowing it to be reasonably understood by the judge. Even if an issue is not explicitly listed in the statements of

issues, the appellate court may still consider it if it is reasonably evident from the appellant's arguments. The record reflects that the Appellant sufficiently presented substantial evidence on the repetitive demands of her role and the impact of those duties on her condition, making it clear that this aspect was fundamental to her claim for compensability. Thus, the issue of repetitive job duties as a contributing factor to her injury was properly preserved and should not be dismissed on these grounds.

CONCLUSION

For the foregoing reasons, the Appellant requests the Court to reverse the Decision and Order of the Full Commission to award proper compensation for the Appellant's accelerated and aggravated injury.

Dated: Thursday, November 7, 2024

Greenville, South Carolina

Respectfully Submitted
By: s/ Lola Stradford Richey
Lola Stradford Richey
South Carolina Bar Number: 8931
Attorney for Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503 (Office)
(864) 467-0646 (Fax)
lawfirm@richeyandrichey.com

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PROOF OF SERVICE

I certify that our office served the REPLY BRIEF OF APPELLANT on Matthew C. LaFave of Crowe LaFave Garfield & Bagley via email at the following for service:

matt@crowelafave.com
ashley@crowelafave.com
melissa@crowelafave.com
Denise@crowelafave.com

Respectfully submitted,

By: s/ Lola Stradford Richey

Lola Stradford Richey
South Carolina Bar Number: 8931
RICHEY and RICHEY, PA
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503 (Office)
(864) 467-0646 (Facsimile)
lawfirm@richeyandrichey.com
South Carolina Bar Number: 8931

Dated: Thursday, November 7, 2024

Richey and
Richey, P.A.
Attorneys at Law

33 Market Point Drive
Greenville, South Carolina 29607

(864) 467-0503 Office
(888) 882-4878 Toll-Free
(864) 467-0646 Facsimile
lawfirm@richeyandrichey.com Email

Workers' Compensation
Personal Injury
Criminal Law

November 7, 2024

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Sonya Parks -vs- Cintas Corporation*
Date of Accident: June 15, 2022
Appellate Case Number: 2024-000822

Dear Ms. Kitchings:

Enclosed for filing is the Reply Brief of Appellant and Proof of Service in the above-referenced matter. If you should have any questions, please do not hesitate to contact our office.

With best wishes and warmest regards, I am

Truly yours,

Lola S. Richey

Lola S. Richey
Attorney at Law
Enclosures

Copy:
Matthew C. LaFave, Attorney
Crowe LaFave Garfield & Bagley
2019 Park Street
Post Office Box 1149
Columbia, South Carolina 29202