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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. 2024-000607

SCWCC FILE NO. 2106012

Nathaniel Coakley, Claimant, Appellant,

v.

Pilgrim's Pride Corp., Employer, and American Zurich Ins. Co., Carrier, Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

This is an appeal from the South Carolina Workers' Compensation Commission (Commission). It involves the Appellate Panel of the Commission's interpretation of a prior order. The Appellate Panel concluded that Respondents had complied with the prior order. Resultingly, the Appellate Panel determined that the Claimant was at Maximum Medical Improvement (MMI) for his injuries, Claimant was entitled to an award of permanent partial disability (PPD), and that Respondents were entitled to credit for overpayment of Temporary Total Disability (TTD) benefits. ROA 36 – 50; Full Commission Order.

The case on appeal was heard by the Single Commissioner on April 18, 2023. Pilgrim's Pride Corp. and American Zurich Ins. Co., Respondents, had filed a Form 21 to determine whether they may stop payment of TTD, and, if so, to determine if Claimant is entitled to any further benefits. Respondents also requested credit for temporary total benefits (TTD) paid in excess of the award.

Appellant argued that Claimant was not at MMI and that a prior Order required Respondents to provide additional treatment to Appellant.

Respondents argued that the prior Order required them to provide "additional medical treatment to the bilateral hips and low back *as recommended by the authorized treating physicians* necessary for Claimant to reach maximum medical improvement." ROA 14; 1/3/23 Order, p. 14, Conclusion of Law Five (5) (emphasis added). Because the authorized treating physicians opined that Claimant was at MMI, no further treatment was necessary.

By Order dated June 7, 2023, the Single Commissioner determined that Respondents complied with the prior order. Specifically, the Commissioner found that "Commissioner Dooley's Order specifically made any further treatment contingent upon the authorized treating physicians' recommendations regarding further treatment." ROA 27; 6/7/23 Order p. 11, Finding of Fact 16. The Single Commissioner further found "that the Defendants' liability for continuing care, as set forth in the prior Order, was to see that Claimant reaches MMI." ROA 27; 6/7/23 Order p. 11, Finding of Fact 17.

The Single Commissioner also determined, as a fact, that Claimant reached MMI "for all affected body parts on January 17, 2023 . . . ." ROA 28; 6/7/23 Order p. 12, Finding of Fact 21. The Single Commissioner assigned Claimant eight percent (8%) PPD to the back and zero percent (0%) to the hips, and he granted Respondents' credit for overpayment of TTD benefits. ROA 28 – 29; 6/7/23 Order pp. 12 – 13; Finding of Facts 24, 25, and 26.

Appellant timely appealed to the Full Commission. ROA 86; Form 30.

The matter was heard by the Appellate Panel on September 18, 2023, and an Order was filed on March 15, 2024. ROA 36 – 50; Full Commission Order. By majority affirmation, the Appellate Panel affirmed the Decision and Order of the Single Commissioner. *Id.* This appeal followed.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act sets forth the standard for judicial review of decisions of the Workers' Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981); *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). The Commission is the ultimate factfinder in workers' compensation cases. *Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). Pursuant to the scope of review, the Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact. *Gadson v. Mikasa Corp.*, 364 S.C. 214, 221, 628 S.E.2d 262 (2006); *Grant v. Grant Textiles*, 361 S.C. 188, 603 S.E.2d 858 (Ct. App. 2004). Substantial evidence is described as, "not a mere scintilla of evidence, nor the 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." *Pratt v. Morris Roofing, Inc.*, 357 S.C. 619, 622, 594 S.E.2d 727 (2004). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence." *Hill v. Eagle Motor Lines,* 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007).

On issues of law, "this court has the power and duty to review the entire record and decide the jurisdictional facts in accord with its view of the preponderance of the evidence." *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 216, 661 S.E.2d 395, 399 (Ct. App. 2008).

ARGUMENTS

I. WHETHER THE SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION'S FINDING THAT RESPONDENTS' DUTY UNDER COMMISSIONER DOOLEY'S ORDER WAS TO PROVIDE TREATMENT UNTIL THE AUTHORIZED TREATING PHYSICIANS OPINED THAT CLAIMANT IS AT MMI.

The Commission properly determined that Respondents met the requirements of Commissioner Dooley's Order. The determination of whether Respondents complied with the prior order is a question of fact for the Commission:

> 'Certain situations involve a mixed question of law and fact.' *Hopper v. Terry Hunt Constr.*, 373 S.C. 475, 479, 646 S.E.2d 162, 165 (Ct. App. 2007), *aff'd by* 383 S.C. 310, 680 S.E.2d 1 (2009). For example, '[s]tatutory interpretation is a question of law.' *Id.* 'But whether the facts of a case were correctly applied to a statute is a question of fact, subject to the substantial evidence standard.' *Id.* Likewise, 'whether an agency correctly applied the facts of a case to a statute is a question of fact.' *Id.* at 483, 646 S.E.2d at 167; *see also Bursey v. S.C. Dep't of Health & Envtl. Control*, 369 S.C. 176, 184-85, 631 S.E.2d 899, 904 (2006), *overruled on other grounds by Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) (recognizing the meaning of a statutory term is a question of law, but whether a gas and electric company's activities met this definition is a question of fact); *Dreher v. S.C. Dep't of Health & Envtl. Control*, 412 S.C. 244, 251, 772 S.E.2d 505, 509 (2015) (stating whether a tract of land was "on and within" Folly Island, as defined under a regulation, was a question of fact).

Boggero v. S.C. Dep't of Revenue, 414 S.C. 277, 280-281, 777 S.E.2d 842, 843 (Ct. App. 2015).

This case is analogous to an administrative agency applying the facts of a case to statute, as Commissioner Dooley's Order was the law of the case at the time the underlying matter was heard. *Dreher v. S.C. Dep't of Health & Envtl. Control,* 412 S.C. 244, 772 S.E.2d 505 (2015).

Here, the Commission found as a fact that "Commissioner Dooley's Order specifically made any further treatment contingent upon the authorized treating physicians' recommendations regarding further treatment." ROA 46; Appellate Panel Order p. 11, Finding of Fact 16. It further found as a fact "that the Defendants' liability for continuing care, as set forth in the prior Order, was to see that Claimant reaches MMI." ROA 46; Order p. 11, Finding of Fact 17.

Appellant fails to quote Commissioner Dooley's Order in his brief. *See* Initial Brief of Appellant. However, to determine if these Findings are consistent with Commissioner Dooley's Order, we must look to the relevant provisions in Commissioner Dooley's Order.

> Pursuant to § 42-15-60, the Claimant is entitled to, and the Defendants are responsible for, additional medical treatment to the bilateral hips and low back *as recommended by the authorized treating physicians necessary for Claimant to reach maximum medical improvement.*

ROA 14; 1/3/23 Order, p. 14, Conclusion of Law Five (5) (emphasis added); and

> IT IS FURTHER ORDERED that the Claimant has not reached MMI and needs further treatment for his bilateral hips and lumbar spine injuries *by orthopedic doctors chosen by Defendants*, and Claimant's attorney must be copied on all correspondence in compliance with Section 42-15-95.

ROA 14; 1/3/23 Order, ¶ three (3); Comm. Dooley's Order, p. 14. (emphasis added). These are the only portions of the Order that require any action be taken by Respondents relative to medical care. See ROA 1 – 16; 1/3/23 Order. Interestingly, Appellant fails to quote or even mention the contingencies placed on continuing treatment (Appellant writes, "Commissioner Dooley further ordered Appellant has not reached MMI and that Appellant needs further treatment for his bilateral hips and lumbar spine with an orthopedic physician pursuant to S.C. Code Ann. §42-15-60 (Supp. 2019).").

Conclusion of Law Five (if it can be read as a Finding of Fact or Order) requires only that Defendants provide treatment until such time as the authorized treating physicians (who were Drs. Nallu and Noojin) determine that Claimant has reached MMI. ROA 14; 1/3/23 Order, p. 14, Conclusion of Law Five (5).

The Order allows Respondents to choose the orthopedic doctor; Commissioner Dooley specifically chose not to name Dr. LaMotta, an orthopedic surgeon, as a new authorized treating physician. *Id.* Respondents sought Dr. Noojin's opinion regarding the hips after the prior hearing.

Dr. Noojin responded in January 2023 that Claimant was at MMI without impairment or restrictions. ROA 742 – 743; DEF APA pp. 267 – 268. Respondents sought Dr. Nallu's opinion regarding the back after the prior hearing. Dr. Nallu responded on November 9, 2022, that Appellant was at MMI with an eight percent (8%) impairment rating to the back. ROA 737 – 738; DEF APA pp. 263 – 264.

Because the opinions of the authorized treating physicians that the Claimant was at MMI originated after the hearing before Commissioner Dooley, Respondents fully complied with what her Order required of them. Since Appellant was at MMI in full after the entry of her Order, no further treatment was necessary. The Commission cannot substitute its judgment for those of medical professionals. *See Burnette v. City of Greenville*, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012).

Accordingly, the substantial evidence supports that, because the Commission correctly determined that Respondents needed to get Claimant to MMI per Drs. Nallu and Noojin, the Commission's ruling should be affirmed. Further, the Order of the Appellate Panel should be affirmed.

II. WHETHER THE SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION'S DECISION TO DISCOUNT DR. LAMOTTA'S IME REPORT.

On his own, Appellant obtained and independent medical examination (IME) from Dr. Ivan LaMotta. ROA 767 – 770; CL APA pp. 292 – 295. The Appellate Panel gave greater weight to the opinions of the authorized treating physicians because the IME report "was based on a false or simply incorrect medical history given to him by [Appellant]." ROA 46 – 47; Appellate Panel Order, p. 11 -- 12, Finding of Fact Twenty-Three (23). Appellant argues that the Commission erred by "addressing credibility of the Appellant and weight afforded the medical opinions based

on such credibility is based on an error of law . . . ." Initial Brief of Appellant, pp. 12 – 13. However, the Commission did not address Appellant's credibility. The Commission only discounted the weight of the IME report because Appellant failed to disclose to Dr. LaMotta his prior history of back and leg/hip pain. The Commission did not fail to consider Dr. LaMotta's opinions; the Commission simply gave greater weight to those of the authorized treating physicians, as did Commissioner Dooley (who left the decisions about MMI up to Drs. Nallu and Noojin).

The Commission rightly gave less weight to the IME report because the doctor wrote, "[Appellant] states he never had any back pain or hip pain, never was seen or evaluated for back pain or leg pain, and never had an MRI prior to the work-related injury on 01/19/2021." ROA 768; CL APA p. 293. This statement to the doctor is patently false, as Appellants prior medical history includes Claimant going to the hospital a few months before his work accident, as explained *infra*. On May 11, 2020, prior to his work-related injuries, Appellant went to Prisma Health Tuomey complaining of left leg pain. ROA 489; DEF APA p. 19. It is noted that Appellant complained of left leg pain for "about 6 months." ROA 490; DEF APA p. 20. He is quoted as telling Emergency Department personnel that the pain was "in the hip area, I think I pulled it out." *Id.* At that time, Appellant denied any trauma, falls, or injuries. *Id.* Claimant indicated that his pain was at a level of ten (10) on a scale from zero (0) to ten (10), and that there was a gradual, six (6) month onset. ROA 491; DEF APA p. 21. Appellant underwent x-rays of his left hip, which showed mild degenerative changes with no acute bony abnormality. ROA 494; DEF APA pp. 24, 31. Appellant was instructed to follow up with his primary care physician within three (3) days. *Id.* The doctors noted that Appellant's pain was relieved by nothing. ROA 495; DEF APA p. 25. Appellant was diagnosed with sciatica, left side. ROA 499; DEF APA p. 29.

Dr. LaMotta was not informed of Claimant's actual history, and his opinion was rightly discounted. Further, this is an issue of fact and the Commission's finding should be affirmed, as it is supported by substantial evidence. Further, the Order of the Commission should be affirmed.

III. ABANDONMENT OF ISSUES ON APPEAL

In his Initial Brief, Appellant raises several issues on appeal that are not subsequently addressed. Initial Brief of Appellant, pp. 4 – 5. These include: (1) whether the Commission erred in finding the Claimant reached MMI for all affected body parts on January 17, 2023?; (2) whether the Commission erred in finding Appellant suffered eight percent (8%) permanent partial disability to the his back?: (3) whether the Commission erred in finding Appellant suffered no (0%) permanent partial disability this his bilateral hips?; and (4) whether the Commission erred in finding that Respondents are entitled to a credit for overpayment of TTD benefits since January 17, 2023?

Respondents deem these arguments abandoned and will not address them.

CONCLUSION

For the forgoing reasons and the reasons that may be set forth at oral arguments of this matter, the Commission's Order dated March 15, 2024, should be affirmed in its entirety.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COUNSEL

I hereby certify on this 5th day of December 2024, that the Respondents' Final Brief complies with requirements of Rule 211(b), SCACR.

December 5, 2024

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