

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

FILE NO.: 1003122

Zeena Fletcher, Employee-Claimant,

Respondent,

vs.

Dick's Sporting Goods, Employer, and **Federal Insurance**
Co., Carrier,

Appellants.

Appellate Panel Review Held in Columbia,
South Carolina on June 18, 2013, per notice timely
and properly served upon all parties of interest.

Appearances: Donald E. Kamb, Jr., Esq. of Kathryn Williams, P.A. of
Greenville, South Carolina for claimant

Andrew D. Smith, Esq. of Smith|Poe, P.A. of Simpsonville, South
Carolina for defendants

Purpose: Appellate Panel Review of issues set forth in defendants' Form 30
Request for Commission Review

Filed: _____

9-19-13

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SC Court of Appeals

STATEMENT OF CASE

This claim came before Commissioner Susan S. Barden on February 5, 2013 in response to claimant's Form 50 hearing request alleging a change of condition with regard to the previously-determined compensable injury to her right knee. As stated in her March 12, 2013 Order, following an extensive pre-hearing conference with the attorneys for both parties, Commissioner Barden expressed concern that the authorized treating physician's uncontroverted opinion, stated to a reasonable degree of medical certainty, that "the Claimant has sustained a change of condition for the worse regarding her right knee condition stemming from her March 13, 2010 injury by accident," would not be sufficient to warrant a finding that the Claimant has sustained a change of condition for the worse to her right knee, and the Commissioner suggested that the case be postponed so that claimant's attorney could obtain additional evidence. However, defendants' attorney objected to the case being postponed, and in response, claimant's attorney withdrew the Form 50 hearing request.

As defendants' attorney admitted in this pre-hearing conference, the reason he objected to the postponement and was insisting that claimant instead withdraw the hearing request was so that he could raise a statute of limitations defense. The Commissioner issued her March 12, 2013 Order specifically finding that the Form 16 in this case was approved by the Commission on February 8, 2012, that the hearing was originally scheduled for January 18, 2013, that the hearing was reset on January 29, 2013 and then on February 5, 2013 at the Commissioner's direction, that claimant was ready to proceed at all three scheduled hearings, that defendants have been on notice of the change of condition claim for months as Claimant timely filed a Form 50 attaching medical

documentation of the change in condition, and that “[a]ccordingly, all applicable time limits in S.C. Code Ann., § 42-17-90 are tolled.”

Within the statutory period, defendants filed an Application for Review of this claim. On May 17, 2013, defendants filed an appellate brief contending “[t]he Single Commissioner erred in allowing the Claimant to withdraw their Form 50, Change of Condition for the worse, since by Order the statute of limitations cannot be tolled as set forth in S.C. Code Ann. § 42-17-90.” On June 12, 2013, claimant filed a respondent brief asserting that the Single Commissioner properly allowed claimant to withdraw her Form 50 request and that the applicable time limits in § 42-17-90 are tolled.

All proffered testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration.

EVIDENCE OF THE CASE

At the hearing before the Single Commissioner, the following summarized evidence was presented and discussion held:

This matter was scheduled for hearing on February 5, 2013 before Commissioner Barden. The Commissioner held an extensive pre-hearing conference with counsel for both parties. The Commissioner expressed concern that claimant may want to obtain additional evidence in addition to the authorized treating physician’s opinion that the claimant has sustained a change of condition for the worse regarding her right knee. The Commissioner discussed postponement in case claimant’s attorney wanted to obtain additional diagnostic evidence. At that point, defense counsel objected to the case being postponed. Claimant’s counsel then withdrew the hearing request.

Defense counsel admitted during the pre-hearing conference that the reason he was insisting the claimant withdraw the hearing request was so that he could raise a statute of limitations defense. The Form 16 was approved by the Commission on February 8, 2012. The hearing was originally scheduled for January 18, 2013, and then reset January 29, 2013. Both hearings were rescheduled at the direction of the Commissioner, and not at the request of the claimant. The case was then reset for February 5, 2013.

Claimant was ready to proceed at all three hearings, and defendants have been on notice of the change of condition claim for months as claimant timely filed a Form 50 attaching medical documentation of the change in condition. Accordingly, all applicable time limits in S.C. Code Ann. § 42-17-90 are tolled.

DECISION

Under S.C. Code Ann. § 42-17-50, an Appellate Panel is empowered to review the appealed award, weigh the evidence as presented at the initial hearing, and, if good grounds are shown therefore, make its own factual findings and legal conclusions consistent with or inconsistent with the Single Commissioner.

Based upon its review of all the evidence on the record in this case, the Panel hereby fully affirms the Order of the Single Commissioner. The Panel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. By previous Form 16A agreement approved by the Commission on February 8, 2012, claimant sustained a compensable injury by accident on March 13, 2010 causing injury to her right lower extremity and back. This finding is based on information contained in the Commission's file.

2. This matter was scheduled for hearing before Commissioner Barden on February 5, 2013 on claimant's Form 50 claiming a change of condition for the worse with regard to her right lower extremity, and claimant and counsel for both parties were present at the hearing.

3. Commissioner Barden held an extensive pre-hearing conference with counsel for both parties, expressed concern that claimant may want to obtain additional evidence in addition to the authorized treating physician's opinion that claimant has sustained a change of condition for the worse regarding her right knee, and discussed postponement in case claimant's attorney wanted to obtain additional diagnostic evidence; however, at that point, defendants' attorney objected to the case being postponed, and claimant's attorney then withdrew the hearing request.

4. Defendants' attorney admitted during the pre-hearing conference that the reason he insisted claimant withdraw the hearing request was so that he could raise a statute of limitations defense.

5. The Commission approved the Form 16 in this case on February 8, 2012.

6. On or about November 20, 2012, claimant filed a Form 50 alleging she sustained a change of condition for the worse with regard to her right knee and attached supporting medical documentation.

7. A hearing was originally scheduled for January 18, 2013, and then reset to January 29, 2013. Both of these previously scheduled hearings were rescheduled at the direction of Commissioner Barden, and not at claimant's request.

8. Claimant was ready to proceed at all three scheduled hearings.

9. Defendants have been on notice of the change of condition claim for months, as claimant timely filed a Form 50 with attached medical documentation of the change in condition.

10. All applicable time limits in S.C. Code Ann., §42-17-90 were tolled, or satisfied, when claimant filed her Form 50 on or about November 20, 2012.

RULINGS OF LAW

1. Under S.C. Code Ann. § 42-17-50, the Commission's Appellate Panel is empowered to review the appealed award, weigh the evidence as presented at the initial hearing, and if good grounds are shown therefore, make its own findings of fact and conclusions of law consistent with or inconsistent with those of the Single Commissioner.

2. By previous Form 16A agreement approved by the Commission on February 8, 2012, claimant has sustained compensable injury by accident causing injury to her right knee. See Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960)(agreement approved by the Commission is binding on the parties).

3. Under S.C. Code Ann. § 42-17-90, claimant timely and properly filed a claim alleging a change of condition for the worse.

4. All applicable time limits in S.C. Code Ann., §42-17-90 were tolled, or satisfied, when claimant filed her Form 50 on or about November 20, 2012.

5. An actual hearing on the alleged change of condition claim need not be held within the one year period referred to in S.C. Code Ann., §42-17-90. Allen v. Benson Outdoor Adver. Co., 236 S.C. 22, 112 S.E.2d 722 (1960)(so long as the change of condition claim is filed with the Commission within the one-year period, the actual hearing on the issue need not be heard during the one year).

6. Claimant's withdrawal of the hearing request in this matter does not withdraw the underlying claim. S.C. Code Reg. 67-609(A), (B)(2010)("[a] claimant may withdraw a Form 50 [hearing request] or Form 52 once as a matter of right with leave to renew" and the withdrawal "is without prejudice to the claimant's right to proceed with his or her claim.").

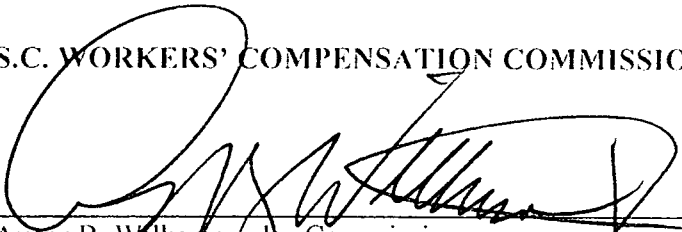
[Signature and Order page follows]

ORDER

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner is hereby affirmed in its entirety.

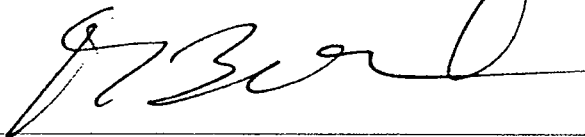
AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION



Avery B. Wilkerson, Jr., Commissioner

CONCUR:



T. Scott Beck, Commissioner

CONCUR:



Andrea C. Roche, Commissioner

Date: 9-19-13
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

By Valerie Deller on September 19, 2013