

State of South Carolina)
)
 County of Aiken)
)
 Debra D. Sasser,)
 Claimant / Petitioner,)
)
 vs.)
)
 S.C. Department of Social Services,)
 Employer,)
)
 and)
)
 State Accident Fund,)
)
)
 Carrier,)
 Defendants / Respondents.)
)

In the Court of Common Pleas

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 OCT 11 2013

SC Court of Appeals

CA No. 12-CP-02-1988
 WCC File No: 0116740

ORDER

FILED August 19 2013

 Liz Godard
 C.C.P.A.G.S.

 Julie Comau
 Deputy Clerk 8:30am

STATEMENT OF THE CASE

This matter is before the Court for Judicial Review of the Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission dated July 11, 2012. For the reasons set forth below the Court affirms the Commission's decision in this case.

The Claimant sustained injuries to her left arm and right leg on October 9, 2001 while working as an administrative specialist for the Employer at its office in Aiken, South Carolina. After this incident the Defendants paid for certain medical treatment received by the Claimant for the injuries sustained by her and also paid temporary compensation to her.

Specifically, the Defendants paid temporary total compensation to the Claimant for the period beginning October 10, 2001 to December 20, 2001, and temporary partial compensation to her for the periods March 22, 2002 to July 6, 2002 and July 8, 2002 to July 17, 2010. According to the Commission's file for this matter a total of 434 weeks of temporary

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this
19th day of AUGUST 20013

 Liz Godard
 C.C.P.A.G.S. Aiken County, S.C.

 Julie Comau

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compensation have been paid to the Claimant to date as a result of the accident forming the basis for this case.

A hearing for this matter was held before Commissioner Andrea L. Roche on June 22, 2011 in Columbia, South Carolina. At that hearing the Claimant contended that she was permanently and totally disabled as a result of the injuries she sustained while working for the Employer. She further contends that she is entitled to additional medical care and treatment as part of this matter.

The Defendants contend that the Claimant is not permanently and totally disabled and is entitled to and award of permanent partial disability benefits as part of this case - with the provision that the total amount of compensation payable to the Claimant in this case, whether temporary or permanent, may not exceed the period of 500 weeks.

The Defendants further contend that the Claimant is entitled to additional medical benefits in accordance with the decision in Dodge v Brucoli Clark, 334 S.C.574, 514 S.E.2d 593 (Ct.App.1999).

As part of her Decision and Order for this matter, Commissioner Roche found that the Claimant is not permanently and totally disabled. Commissioner Roche awarded the Claimant compensation for a sixty percent permanent partial disability to her right leg and compensation for a ten percent permanent partial disability to her left arm. When added to the 434 weeks of temporary compensation paid to the Claimant to date, the award in this case exceeds a period of 500 weeks.

In addition, Commissioner Roche held that the Defendants are responsible for the payment of certain medical expenses for treatment rendered to the Claimant as well as payment

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for certain future medical treatment.

The Defendants subsequently filed a Request for Review of Commissioner Roche's Decision and Order. A review hearing was held before an Appellate Panel of the Commission on January 18, 2012. Following that hearing the Appellate Panel issued its Decision and Order, and by which it modified Commissioner Roche's decision.

Basically, the Commission Panel found that the award of compensation in this matter may not exceed a period of 500 weeks. The Panel also concluded that the Defendants are not responsible for payment of those costs associated with the Claimant's fibromyalgia and myofascial pain syndrome.

ISSUES PRESENTED

The Claimant presents the following issues for consideration by this Court and as part of her Petition for Judicial Review:

1. Did the Commission err in limiting the award of compensation in this matter to 500 weeks of such compensation?
2. Did the Commission err in finding and concluding that the Claimant sustained a sixty percent permanent partial disability to her right leg as a result of the accident forming the basis for this case?
3. Did the Commission err in finding as a fact and in concluding as a matter of law that the Claimant sustained a ten percent permanent partial disability to her left arm as a result of the accident forming the basis for this case?
4. Did the Commission err in finding as a fact and in concluding as a matter of law that the Claimant's right knee injury did not aggravate a pre-existing fibromyalgia?
5. Did the Commission err in finding as a fact and in concluding as a matter of law that the Claimant's pre-existing fibromyalgia did not aggravate her right knee injury?

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6. Did the Commission err in finding as a fact and in concluding as a matter of law that the Defendants are not responsible for payment of medical expenses and benefits related to the Claimant's pre-existing fibromyalgia and myofascial pain syndrome?

REVIEW OF RECORD AND STANDARD OF REVIEW

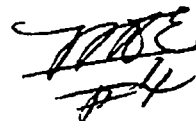
Calculation of Award of Permanent Partial Benefits to Claimant

As reflected by the Commission's file for this matter a total of 434 weeks of temporary compensation has been paid to the Claimant to date and as part of this matter. This amount is established by a Form 17 which was certified at a hearing before Commissioner Derrick Williams on January 18, 2011. Commissioner Roche's Order provides that the Claimant is entitled to receive 117 weeks of compensation for a sixty percent permanent partial disability to her right leg and 22 weeks of compensation for a ten percent permanent partial disability to her left arm.

Thus, the end result of Commissioner Roche's Order for this matter is that the Claimant will receive 573 weeks of compensation for injuries sustained as a result of the accident forming the basis for this case.

Pursuant to S.C. Code Ann. §42-9-10 (1976) the maximum number of weeks of compensation payable to any injured worker is 500 weeks, and in the absence of a basis for an award of payment of lifetime compensation. It is well-settled in this State that the amount of compensation payable is calculated on the basis of number of weeks of compensation actually paid, without regard as to whether or not such weeks are total or partial. See Roberts v. McNair Law Firm 366 S.C. 50, 619 S.E.2d 453 (Ct.App. 2005).

In her order for this matter, Commissioner Roche concluded that the 500 week limit did not apply in this matter because the Claimant is not permanently and totally disabled.



Commissioner Roche specifically found that the ruling in Roberts did not apply in this matter.

I find the Commission Appellate Panel correctly held that Commissioner Roche erred in ruling that the 500 week limit did not apply in this case. The statutory framework for the award of compensation under the South Carolina Workers' Compensation Law is very specific. The statutory framework makes no distinction between whether or not weeks of compensation paid to a Claimant are temporary or permanent and for purposes of the maximum number of weeks of compensation which are payable under the Act.

Using the theory set forth in Commissioner Roche's Decision and Order a Claimant might hypothetically be entitled to payment of life time compensation as long as such compensation were determined to be "temporary" in nature. Any Claimant on a running award of weekly benefits would be entitled to receive such benefits indefinitely, and in excess of 500 weeks, in the absence of a finding that the Claimant had reached a point where such benefits could be stopped. Such a result is contrary to the provisions of the Act.¹

Defendants' Liability for Medical Treatment for Claimant

Commissioner Roche found that the Defendants are liable and responsible for payment of certain medical expenses for treatment provided to the Claimant, as well as payment for future medical treatment. As noted, the Appellate Panel modified Commissioner Roche's decision in this regard.

Upon review in South Carolina, a decision of an administrative agency should be affirmed unless that decision is clearly erroneous in view of the reliable, probative and substantial evidence on the record as a whole. S.C. Code Ann. § 1-23-380(g)(6) (1976); Lark v.

¹ Certain specific exceptions to the 500 week limitation are set forth in S.C. Code Ann. § 42-9-10 (1976) and which are not applicable here.

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Bi-lo, Inc., 276 S.C. 130, 276 S.E. 2d 304 (1981). The court reviewing the agency's decision should not substitute its own findings of fact for those of the agency nor should the court substitute its judgment for that of the agency as to the weight of the evidence. Tobey v. L & P Construction Company, 296 S.C. 122, 370 S.E. 2d 897 (Ct. App. 1988).

Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the agency involved reached to justify its decision. Harrell v. Pacific Columbia Mills, 291 S.C. 469, 471, 354 S.E. 2d 384, 385 (1987). The substantial evidence rule means that the court will not overturn findings of fact by an administrative agency unless there is no reasonable probability that the fact could be as related by the witness upon whose testimony the finding was based. Lark v. Bi-Lo, Inc., *infra*. When factual findings are supported by substantial evidence, analogous to a jury's finding of fact on disputed issues, the agency's conclusions should be affirmed. Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E. 2d 613 (1986).

The Employer and the State Accident Fund contend that the Appellate Panel correctly modified Commissioner Roche's decision that they are responsible for payment for treatment of the Claimant's fibromyalgia and myofascial pain syndrome. There is no question that the Claimant suffered from these conditions before the accident forming the basis for this case. The record for this case reflects that she received ongoing medical care and treatment for these conditions prior to the accident.

The Appellate Panel, after reviewing the record presented here, agreed that there is no reliable medical evidence contained in the record for this matter to support a conclusion that these pre-existing conditions were aggravated to a point which justifies a requirement that

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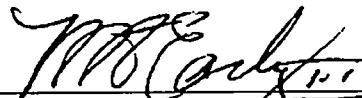
the Defendants pay for such treatment in the future.

The Defendants do not deny that the specific injury to the Claimant's right leg and left arm most probably will require ongoing medication management in the future. To the extent the treatment for the Claimant's preexisting problems is intertwined with treatment for the injuries forming the basis of this case, such medical expenses should be segregated from those which should be paid by the Defendants.

As such, I find that there is substantial evidence contained in the record for this matter to support the Commission's decision on this issue, and the Commission's Decision and Order should be affirmed.

ORDER

For the reasons set forth above, the Decision and Order of the South Carolina Workers' Compensation Commission dated July 11, 2012 is affirmed.



Honorable Doyet A. Early, III
Presiding Judge

Dated:

July 1, 2013
Gamberg, South Carolina