

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1014463

GEORGE GLOVER,
Employee,
Appellant,
vs.
PIGGLY WIGGLY,
Employer,
AND
CONSTITUTION STATE SERVICE
COMPANY AS TPA FOR GREENBAX
ENTERPRISE INC,
Carrier,
Respondents.

RECEIVED
OCT 16
SC Court of Appeals

**ORDER OF APPELLATE PANEL OF
THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**

~~RECEIVED~~
OCT 17 2013
SC Court of Appeals

HEARING: Held in Columbia, South Carolina on August 13, 2013.

APPEARANCES: Appellant proceeded *Pro se*.
Respondents represented by Michael E. Chase, Esquire, of
Turner Padgett Graham & Laney P.A.

PURPOSE OF HEARING: To determine the issues as set forth on Appellant's Form 30
Request for Commission Review.

DECISION AND ORDER: Gene McCaskill, S.C. Workers' Compensation Commissioner,
Assigned Commissioner,
Melody James, S.C. Workers' Compensation Commissioner,
Andrea Roche, S.C. Workers' Compensation Commissioner.

FILED: _____ 9-19, 2013.

STATEMENT OF THE CASE

The parties were heard by Commissioner Avery Wilkerson on May 7, 2013. On June 6, 2013, Commissioner Wilkerson issued an Order stating the following:

1. Claimant alleges injury to his left shoulder, neck, low back and left hand as a result of an alleged accident occurring September 27, 2010 while employed by Piggly Wiggly.

2. A hearing was held before Commissioner Williams on November 28, 2011 with regard to this alleged accident and the same parties present before me at the May 7, 2013 hearing were represented at the November 28, 2011 hearing before Commissioner Williams.

3. Commissioner Williams issued an Order January 12, 2012 finding Claimant's claim was barred based on Cooper v. McDevitt & Street Co., 260 S.C. 463, 196 S.E.2d 833 (1973) for fraud in the application of employment.

4. The Commission did not receive notice of appeal from Claimant with regard to Commissioner Williams' Order.

5. Since Commissioner Williams' Order was not appealed, it became the law of the case.

6. *Res judicata* bars re-litigation of this case.

7. Commissioner Wilkerson sent instructions to Attorney Chase on May 15, 2013 to draft a proposed order consistent with his directives within thirty (30) days.

CONCLUSIONS OF LAW

1. Regulation 67-701(A) of the South Carolina Code of Laws is applicable in defining the period in which the Claimant has a right to file a Form 30 Request for Commission Review with the Commission.

2. The doctrine of *res judicata* “bars a subsequent suit by the same parties on the same issues. . . . [and] . . . is shown if (1) the identities of the parties is the same as a prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction.” Garris v. The Governing Board of the South Carolina Reinsurance Facility, 333 S.C. 432, 511 S.E.2d 48 (1998) *reh’g denied* (March 5, 1999) (citations omitted).

3. The South Carolina Supreme Court “has repeatedly held that, under the doctrines of *res judicata* and collateral estoppel, the decision of an administrative tribunal precludes the re-litigation of the issues addressed by that tribunal in a collateral action.” Bennett v. South Carolina Department of Corrections, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991).

4. The law of this case, as discussed in Commissioner Williams’ January 12, 2012 Order, remains that Claimant’s claim is barred based on Cooper v. McDevitt & Street Co., 260 S.C. 463, 196 S.E.2d 833 (1973) for fraud in the application of employment.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. The Claimant’s claim for benefits under the South Carolina Workers’ Compensation Act is denied.
2. No hearing costs are assessed.

IT IS SO ORDERED.

Within the statutory period, *Pro se* Claimant filed a Form 30, Request for Commission Review, setting forth two grounds for review, copies of which were furnished to all interested

parties prior to oral argument presented to the Appellate Panel on August 13, 2013. All documentary evidence has been presented by oral argument to the individual members of the Appellate Panel of the Full Commission and has since been under study and consideration. By appeal it is respectfully submitted that the Hearing Commissioner erred in the following:

1. The single Commissioner erred in finding Appellant's claim is denied in its entirety due to *Res Judicata*.
2. The single Commissioner erred in not addressing Appellant's ongoing complaints allegedly related to this accident.

In conducting its review, the Appellate Panel must weigh the evidence presented at the initial hearing and, if good grounds be shown therefor, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the Hearing Commissioner. *See* S.C. Code Ann. § 42-17-50. Based upon its review of the record evidence, and consistent with applicable statutory and common law precedents, the Appellate Panel hereby fully affirms the Single Commissioner's Decision and Order in its entirety. The Commission declines to make any new findings, changes, or amendments to the Decision and Order of the Single Commissioner, dated June 6, 2013.

ORDER

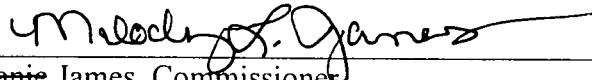
IT IS HEREBY ORDERED:

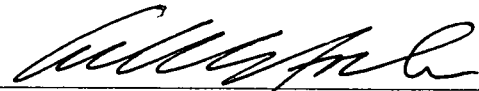
1. The Claimant's claim for benefits under the South Carolina Workers' Compensation Act is denied.
2. No hearing costs are assessed.

IT IS SO ORDERED.

South Carolina Workers' Compensation Commission


Gene McCaskill, Assigned Commissioner


Melanie James, Commissioner
Melanie


Andrea Roche, Commissioner

Columbia, South Carolina

Dated: 9-19, 2013.

CERTIFICATE OF SERVICE

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

This 19 day of September, 2013
Valerie D. Deller

Administrative Assistant to the Commissioner

George Glover (Req'd Cert)
Michael E. Chase