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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

WCC File No. 2216315

Court of Appeals Case No. 2025-001178

Amos Mack, Employee,.....Appellant,

v.

Don's Car Crushing, Employer,
and BusinessFirst Insurance Company, Carrier Respondents.

INITIAL BRIEF OF RESPONDENTS

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ISSUES ON APPEAL

1. Whether the Full Commission committed reversible error and violated the claimant's due process rights by settling the record for appeal.
2. Whether the Full Commission erred as a matter of law in failing to give proper evidentiary weight to the employer's Form 12A First Report of Injury or Illness which served as an admission that the claimant's injury arose out of and in the course of his employment.
3. Whether the Full Commission's finding that the claimant failed to prove a causal connection between his injury and his employment is clearly erroneous and unsupported by substantial evidence.

STATEMENT OF THE CASE

This is a workers' compensation appeal by Amos Mack ("Appellant") from the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel (the "Full Commission"), filed on May 16, 2025, which upheld the Decision and Order of the Hearing Commissioner, filed on September 9, 2024.

This claim arises from an alleged injury to Appellant's left shoulder, left arm, right arm, right hip, and right leg occurring on or about October 14, 2022. Respondents have denied this claim in its entirety, including the denial that any injury took place by accident as pled. Respondents denied this claim primarily based upon the contention the Claimant did not have any medical evidence causally relating the alleged injuries to the accident, but also based on the fact that the accident was unwitnessed, occurred within hours of starting his employment with the Respondent-Employer, and occurred just after receiving workers' compensation benefits from the state of Louisiana for related injuries for 9 or 10 years.

Appellant was formerly represented by John C. Land, III, Esquire. This claim was initiated when Appellant's former counsel filed a Form 50, Employee's Notice of Claim on behalf of Appellant on November 11, 2022. Appellant's former counsel filed a Form 50 Employee's Notice of Request for Hearing on February 16, 2024, to address issues regarding the payment of medicals, payment of temporary weekly benefits, and payment for loss of use and disability to the allegedly injured body parts. The Respondents timely filed a Form 51 Employer's Answer to Request for Hearing denying the claim in total. An amended Form 50 Employee's Notice of Request for Hearing was filed by Appellant's former counsel on February 5, 2024, and Respondents filed a Form 51 Employer's Answer to Request for Hearing on March 15, 2024, denying the claim in its entirety. A hearing was set on this matter on May 15, 2024, before Commissioner Avery B.

Wilkerson. Appellant testified at the hearing and was subject to extensive cross-examination by the Respondents. Commissioner Wilkerson issued his proposed Order instructions, wherein he found as a fact that the Appellant did suffer a compensable injury to his left shoulder, both wrists, right hip, and back, that the burden of proof was met by the Appellant with testimony, and that the Respondents were responsible for providing causally related medical care and other applicable benefits under the Act. However, due to extenuating circumstances, Commissioner Wilkerson recused himself from the matter before the Order was signed, and the case was reassigned to a new jurisdictional commissioner, Commissioner Mike Campbell.

After reviewing the medical evidence, exhibits and hearing testimony, Commissioner Campbell issued a Decision and Order filed September 9, 2024, finding the Appellant had not met his burden of proof that he sustained compensable injuries or aggravation arising out of and in the course and scope of his employment and, as such, was not entitled to benefits under the Act.

Then counsel for the Appellant filed a motion to be relieved as Appellant's counsel on September 12, 2024, which was subsequently granted on October 12, 2024. Appellant filed an appeal *pro se* with the South Carolina Workers' Compensation Commission on September 13, 2024. The Hearing before the Full Commission was set for January 13, 2025. The Appellant's brief to the Full Commission was substantially illegible, rendering it nearly impossible for the Respondents to respond to the brief in its entirety. However, the legible portion appeared to place the burden of proof regarding compensability upon the Respondents, which the Respondents contested in their reply. On January 8, 2025, a Judicial Order was served by the Full remanding the case back to the Hearing Commissioner for the purpose of correcting a scrivener's error discovered upon review of the Hearing Commission's Decision and Order dated September 9, 2024. The Full Commission discovered that the APA Submissions and Exhibits listed in the

Decision and Order did not accurately reflect the APA Submissions and Exhibits that were admitted into the record and considered by the Hearing Commissioner. The matter was remanded to the Hearing Commissioner for the limited purpose of settling the record by identifying the APA Submissions and Exhibits that were considered by the Hearing Commission in reaching their decision. The hearing before the Full Commission was reset for March 10, 2025. The Appellant did not appear in Court for the rescheduled hearing in front of the Full Commission, and as such, the Commission ruled on the appeal without oral argument from the parties. The Full Commission upheld the determination from the Hearing Commissioner in a Final Decision and Order dated May 16, 2025.

This appeal followed.

STATEMENT OF FACTS

Appellant reported to The Regional Medical Center on October 17, 2022, where he reported slipping and falling at work on October 14, 2022, and complained of pain to his right hip, lower back, right leg, neck, both wrists, and left shoulder. (Claimant's APAs, p. 1). Appellant had X-rays done on his left shoulder, his back, and his right hip. (Claimant's APAs, p. 4). The x-ray to the right hip showed no signs of a fracture but signs of bilateral hip osteoarthritis, the x-ray to the left shoulder appeared normal with no signs of a traumatic injury but mild glenohumeral osteoarthritis, and the x-ray to the spine demonstrated an L4-5 degenerative disc disease and degenerative spondylosis with duffed facet osteoarthritis. (Claimant's APAs, p. 5-7). He was prescribed pain medication and instructed to follow up with a primary care provider. (Claimant's APAs, p. 8).

Appellant followed up with Family Health Centers and saw Julia Watson, FNP on November 14, 2022. (Claimant's APAs, p. 20). He was out of work for the month in between

seeing The Regional Medical Center and Family Health Centers. (*Id.*) He again noted falling at work which resulted in pain to the left shoulder, right hip, and bilateral wrist pain. (*Id.*) Appellant also noted he was given muscle relaxers and pain medication and desired refills from his visit with The Regional Medical Center. (*Id.*) At this appointment he was told to follow up for orthopedic treatment. (*Id.*) Appellant returned to Family Health on January 11, 2023, where it was noted he had been out of work since his alleged work accident. (Claimant's APAs, p. 18). He was evaluated, requested muscle relaxers and pain medication, and was referred for an MRI of his back, neck, and right shoulder. (Claimant's APAs, p. 19)

The MRI of the lumbar spine revealed a 2.1mm annular disc herniation with a posterior annular. (Claimant's APAs, p. 28). The MRI of the right shoulder revealed moderate supraspinatus tendinosis without evidence of a tear, inferomedial dislocation of the extra-articular long head of biceps tendon, diastases of the acromioclavicular joint with marginal osteophytes, and joint space narrowing and chondromalacia at the glenohumeral joint. (Claimant's APAs, p. 30). The MRI results were discussed in a follow up appointment on January 26, 2023, with FNP Watson. (Claimant's APAs, p. 21). The Appellant was once again instructed to follow up with orthopedics. (Claimant's APAs, p. 23).

Beginning April 21, 2023, Appellant primarily treated with Bowman Family Practice Clinic and Midlands Orthopaedics and Neurosurgery for complaints to his wrist, back, and shoulder. (Claimant's APAs 38-55, 66-68).

Importantly, Appellant had a medical history which indicated prior issues with the same body parts as his alleged work injuries. He was seen by Dr. Scott Boyd at Columbia Neurological Associates, P.A. on December 6, 2012, where he complained of right low back and buttock pain with a subtle radicular component on the right side. (Defendant's APA's, p. 28). Appellant began

treating with Dr. Christopher Mazoue on December 7, 2012, when he complained of right shoulder pain, back pain, and bilateral hip and wrist pain. (Claimant's APA's, p. 73). He underwent surgery to his right shoulder on December 27, 2012, and continued to treat with Dr. Mazoue. (Claimant's APAs, p. 69-71). On September 27, 2013, he complained of right buttock and hip pain, noting it had been constant since May 10, 2012. (Claimant's APAs, p. 85). On September 29, 2013, Dr. Mazoue gave Appellant an impairment rating on 7% to the left upper extremity due to the relationship to the right shoulder. (Claimant's APAs, p. 88). Appellant had an MRI for the right shoulder on June 14, 2012, where there was a finding of a short focal area of fluid signal intensity, and represents an interstitial tear of the infraspinatus, and a focus of fluid signal intensity at the anterior aspect of a portion of the supraspinatus tendon, likely representing a partial tear of the supraspinatus tendon. (Defendant's APAs, p. 31-4). Appellant underwent an MRI of the spine on June 14, 2012, where it was found there was minimal bulging noted at the L4-5 and L5-S1 levels, but no protrusions. (*Id.*).

In 2020 Appellant sought treatment with Carmen Cribb, DO, for chronic pain in his right shoulder and right leg. (Claimant's APAs, p. 95). He followed up on February 18, 2020, and relayed that he was still having pain in his neck and back due to his injury from 2012, and he was experiencing numbness in his right lower leg. (Claimant's APAs, p. 99). On June 10, 2020, Appellant complained of severe pain and/or stiffness in both of his shoulders and his right hip. (Claimant's APAs, p. 104). Carmen Cribb, DO, also noted under his associated symptoms that he was experiencing neck pain and stiffness. (*Id.*). After this appointment in 2020, it was noted on his medical records that per his workers' compensation company, they were only allowed to focus on his right shoulder pain. (Claimant's APAs, p. 111).

An Independent Medical Evaluation was conducted by Dr. Dowse Rustin on February 22, 2023, at the request of the Appellant's prior counsel. (Claimant's APAs, p. 33-37). Dr. Rustin was asked to evaluate Appellant for his neck, back, both wrists, and left shoulder. (*Id.*) After his review, Dr. Rustin recommended that Appellant be referred to a sports medicine physician as well as a spine specialist for review of the complaints he has with his low back and right lower extremity. (*Id.*) He also noted he believed Appellant's right hip pain was secondary to his osteoarthritis as his osteoarthritis predated his work injury. (*Id.*) Dr. Rustin indicated that he would give the Appellant impairment ratings of 11% to the right upper extremity, and 9% impairment of the lumbar spine. (*Id.*) However, in the deposition of Dr. Rustin, it was revealed through his prior medical records that Appellant had been experiencing chronic pain associated to each of his complained of body parts for some time, but at least since 2020. (Deposition transcript, p. 59). Appellant did not inform Dr. Rustin of the fact that he had symptoms with some of his alleged body parts prior to the fall. (Deposition transcript, p. 9). The symptoms Appellant complained of following his alleged accident were similar to ones that were present in his medical history, but when Dr. Rustin completed his IME, he was operating under the assumption that each of his symptoms aside from his shoulder were new symptoms associated to the accident. (Deposition transcript, p. 61). But during his review of the medical records during the deposition, Dr. Rustin determined that Appellant had been experiencing chronic pain and taking medication for pain related to his back, shoulder, hip, and neck dating back to 2011. (Deposition transcript, p. 45-46). Appellant had indicated to Dr. Rustin that he had not had any pain in his right shoulder since he was released by Dr. Mazoue in 2013, but his medical records indicate he was also complaining of chronic pain in his right shoulder leading to an MRI in 2020. (Deposition transcript, p. 47-48). In 2020 he was also complaining of pain to his right arm, right buttock, and leg. (Deposition

transcript, p. 53). Additionally, in his review of additional medical records during his deposition, Dr. Rustin noted that the Appellant did not mention his right shoulder to physicians until nearly three months after the accident. (Deposition transcript, p. 35). Appellant did not disclose to Dr. Rustin that he had been on worker's compensation in Louisiana up until 2019, or that he had filed for social security disability in 2019. (Deposition transcript, p. 54-55). Dr. Rustin noted that when he gives an opinion on causation, he has to rely on the material he is given and what he is told, and in this case, Dr. Rustin indicated he could not rely on what Appellant had told him regarding his medical history. (Deposition transcript, p. 68).

Additionally, in the Hearing in front of Commissioner Wilkerson, there were some notable discrepancies in his Appellant's testimony. When asked whether he had ever had any left shoulder pain before this accident, he indicated he had not. (Hrg. Transcript, p. 64). He also indicated he had never had any problems with either of his wrists before this accident that he could recall. (*Id.*) He then went on to testify he could not recall if he had ever had any issues with his wrists, legs, ankles, knees, or neck, could not recall any back injuries, and could not recall if he had been to see any doctors in the three to five years leading up to this accident. (Hrg. Transcript, p. 69-72).

In the Full Commission's Decision and Order, it was noted that Appellant's testimony and failure to disclose his medical history to his providers resulted in unreliable records and opinions by these providers, and there were no reliable opinions as to causation. (Final Decision and Order dated May 16, 2025). Therefore, Appellant was determined to have failed to meet his burden of proof and did not prove that his injury arose from the course of his employment. (*Id.*)

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act (APA) gives judicial review of decisions by the Commission." *Hartzell v. Palmetto Collision, LLC*, 415 S.C. 617, 622, 785 S.E.2d

194, 197 (2016). It is well established that “the Commission is the ultimate fact finder” in workers’ compensation cases, and its findings “must be affirmed if they are supported by substantial evidence.” *Holmes v. Nat’l Serv. Indus.*, 395 S.C. 305, 308, 717 S.E.2d 751, 752 (2011); see also *Muir v. CR Bard, Inc.*, 336 S.C. 266, 282, 519 S.E.2d 583 (Ct. App. 1999) (“The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence”); *Jordan v. Kelly Co.*, 381 S.C. 483, 674 S.E.2d 166 (2009); *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). Substantial evidence is evidence which, when viewed as a whole, “would allow reasonable minds to reach the conclusion the agency reached.” *Pierre*, 386 S.C. at 540, 684 S.E.2d at 618. This standard does not permit substitution of judicial judgment for agency judgment; a finding “upon which reasonable men might differ will not be set aside.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981).

ARGUMENT

I. THE FULL COMMISSION DID NOT COMMIT REVERSIBLE ERROR NOR VIOLATE THE CLAIMANT’S DUE PROCESS RIGHTS BY SETTLING THE RECORD.

Appellant contends that the Hearing Commissioner created reversible error and violated his due process rights by settling the record for appeal. That contention is unsupported by the procedural posture of the case. The error in the record for appeal was a scrivener’s error in the Decision and Order issued on September 9, 2024. Therefore, the correction before review does not compromise the integrity of the record for appeal and thereby does not create a condition for reversible error, nor was it a violation of the claimant’s due process rights.

Rule 60(A) of the South Carolina Rules of Civil Procedure states that “clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct

the mistake must be obtained from the appellate court.” Rule 60(A), SCRPC. So long as the correction of clerical errors does not amount to changing the scope of the judgment, the court has the power to correct mistakes made in its own process. *Brown v. Brown*, 392 S.C. 615, 622, 709 S.E.2d 679, 683 (Ct. App. 2011) (citing *Michel v. Michel*, 289 S.C. 187, 190, 345 S.E.2d 730, 732 (Ct.App.1986)); see also *Trimmier v. Thomson*, 19 S.C. 247, 252 (1883).

The Hearing Commissioner in this instance made a scrivener’s error regarding the APA Submissions written into the Decision and Order compared to what was actually reviewed. There were no new or additional documents reviewed by the Hearing Commissioner, nor were there any documents submitted that were not reviewed before the issuance of the Order. The error made was clerical in nature as it was an improper transcription of APA names. The Full Commission was the direct appellate board in this case and specifically requested that the error be corrected. This amendment to the Decision and Order did not change the scope of the judgment, nor did it change the materials reviewed or relied upon. There was no error committed with the correction of the scrivener’s error and, as such, there was no violation of Appellant’s due process rights.

II. THE FULL COMMISSION GAVE APPROPRIATE WEIGHT TO THE EMPLOYER’S FIRST REPORT OF INJURY.

Appellant contends that the Full Commission erred as a matter of law by failing to properly consider the carrier’s admission of records. Specifically, Appellant takes issue with the filing of the Form 12A, First Report of Injury or Illness, and the provision of medical benefits which were eventually stopped after further investigation of the claim. The Form 12A serves as a form of notice to the South Carolina Workers’ Compensation Commission that a claim has occurred and is being filed, but it does not dispositively confirm admission that such claim took place while in the course and scope of employment. In short, it is a required form, not an admission of liability.

Additionally, it is long established that an insurance carrier's initial agreement to provide medical care while the claim is under investigation is not a final admission of compensability in South Carolina. S.C. Code of Regs. § 67-411. Therefore, the Full Commission gave the required amount of weight to the Form 12A in reaching a determination regarding compensability.

The South Carolina Code of Regulations § 67-411(A)(2) indicates that the "Commission shall not construe the filing of a Form 12A as an admission of liability on the part of the employer or the employer's representative." South Carolina employers have a duty to keep a record of all injuries that are reported to them by employees. Respondents filed a Form 12A in this case, but as a record and notice of an incident that had been reported to them by the Appellant. This report did not serve as an admission that the alleged incident was compensable under the Act.

The temporary provision of medical expenses is also not an admission of liability. It is not uncommon for medical benefits to be paid while a claim is under investigation, and to later be revoked once the investigation has been conducted. In fact, Regulations 67-505 and 67-506 provide avenues whereby an employer/carrier can terminate benefits, and even deny a claim unilaterally, within 150 days of the accident. S.C. Code of Reg. §§ 67-505 and 506. These regulations provide employers and insurance carriers with adequate time to determine the facts of the situation without forcing the injured employee to pay for their own treatment until those facts have been revealed. Additionally, from a public policy standpoint, if the Form 12A and provision of medical benefits were taken as an admission of liability, employers would be deterred from ever filing incident reports or paying for medical expenses. In conclusion, the Full Commission gave the proper amount of weight to the consideration of the Form 12A and the provision of medical benefits in coming to their decisions, as these are not admissions of liability.

III. THE FULL COMMISSION PROPERLY FOUND THE CLAIMANT FAILED TO PROVE A CAUSAL CONNECTION BETWEEN HIS INJURY AND HIS EMPLOYMENT.

Appellant contends that that the Full Commission's finding that the Appellant failed to prove a causal connection between his injury and his employment is clearly erroneous and unsupported by substantial evidence. Appellant's argument did not outline the reasons for which he alleges the Full Commission's decision was erroneous and unsupported by substantial evidence, rather, he generally states his contention as his argument. Appellant did not include discussion or citations of authority for this third issue, which is improper pursuant to South Carolina Appellate Court Rule 208. Rule 208, SCACR. Respondents are thereby unable to respond to the Appellant's argument in its entirety as written but contend that the Full Commission properly found that the Appellant failed to prove a causal connection.

Respondents denied this claim primarily based upon the contention the Claimant did not have any medical evidence causally relating the alleged injuries to the accident, especially in light of the testimony of the Appellant's hired independent medical evaluator, Dr. Rustin. Simply put, Dr. Rustin's testimony completely undid any possible medical evidence of compensability. Additionally, the denial was based on the fact the accident was unwitnessed, occurred within hours of starting his employment with the Respondent Employer, and the claimant has just finished receiving workers' compensation benefits from the state of Louisiana for 9 or 10 years. The evidence in the record does not contradict these contentions, nor did Appellant did not produce any medical evidence to the contrary that his alleged injuries were causally related to his alleged accident.

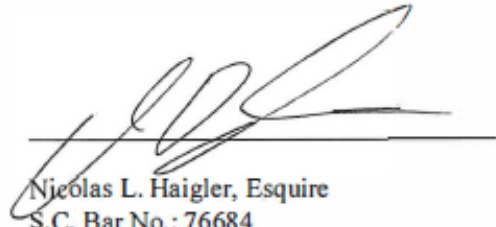
S.C. Code Ann. § 42-1-160 indicates that in medically complex cases, which are cases that require highly scientific procedures such as MRIs, CAT scans, or x-rays, "an employee shall

establish by medical evidence that the injury arose in the course of employment.” S.C. Code Ann. § 42-1-160 (2007). Medical evidence “means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.” *Id.* The burden is on the Appellant to prove that his injuries were causally related to his alleged work injury. As such, there is no evidence in the record proving that his injuries were related to his alleged work accident, nor were any physicians able to give causation opinions linking the injuries to the accident. The Full Commission was tasked with reviewing the medical evidence, testimonial evidence, and all other APA Submissions to come to their determination. The substantial evidence in the record supports the determination there was no causal relationship between the injury and his employment, and therefore the Full Commission did not err in its decision.

CONCLUSION

For the reasons set forth, the Full Commission’s Decision and Order dated May 16, 2025, should be affirmed in its entirety. The Full Commission had substantial evidence in coming to its determination that the Appellant’s injury did not occur within the course and scope of the Appellant’s employment. The testimony evidence as well as the medical evidence relied on by the Full Commission, demonstrates Appellant was not injured within the course and scope of his employment, and that the Full Commission did not err in their decision. While Appellant’s argument is well received, it is not properly placed in the law of Workers’ Compensation in South Carolina. Therefore, the Full Commission’s Decision and Order should be upheld.

(Signature Page to Follow)

A handwritten signature in black ink, appearing to read 'N. Haigler', is written over a solid horizontal line.

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