

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

W.C.C. FILE NO: 1206355

Frances Baron

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

Sanctuary Hospice

EMPLOYER,

AND

Guarantee Insurance Company c/o Patriot National
Insurance Group

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on October 15, 2013 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

12-12-13

APPEARANCES: Claimant/Appellant represented by William G. Jenkins, Jr., Esquire
Defendants/Respondents represented by Kathleen G. Lyall, Esquire of
McAngus, Goudelock, and Courie LLC.

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SC Court of Appeals

STATEMENT OF THE CASE

Claimant was involved in a car accident on May 21, 2012 when she was driving from a patient's home back to the office, had a syncopal episode and was involved in a single car automobile accident as the result of the same. A hearing was held before the undersigned Commissioner on February 27, 2013 in Yemassee, South Carolina on Forms 50 and 51 to determine compensability of the claim.

Claimant alleged she sustained a compensable accident by injury arising out of an in the scope and course of her employment. She requested payment of all causally related medical bills and alleged entitlement to temporary total disability benefits from the date of accident to the present and continuing.

Defendants denied that Claimant sustained a compensable injury under S.C. Code Ann. §42-1-160. Specifically, Defendants stipulated that Claimant was in the course of her employment at the time of the accident, but Defendants denied the accident arose out of employment as the accident was caused by Claimant's syncopal episode and unrelated to her employment. Defendants submitted a detailed Memorandum of Law to support their position, citing numerous cases on point including Edge v. Duncan Mills, 202 S.C. 189; 24 S.E.2d. 268 (1943). Defendants further asserted that should the claim be found compensable, Claimant's compensation rate and entitlement to temporary total disability benefits should be limited as Claimant was not planning on returning to work full-time starting a week following the accident.

In a Decision and Order dated June 14, 2013, the Single Commissioner found as fact that Claimant was in an automobile accident on May 21, 2012; that Claimant lost consciousness, ran off of the road and hit a tree; that Dr. Scott Condie, the attending physician at Coastal Carolina Medical Center, opined that Claimant suffered a syncopal event which resulted in the accident;

that neither Dr. Condie nor Dr. MacCabe, to whom Claimant was referred for a consultation, opined as to a cause for this syncopal event; that on the Form 58, Claimant alleges injuries to her head/brain, eyes, face, both legs, both ankles, and both feet; that the question at bar is whether Claimant's injuries are compensable and what benefits, if any, she is entitled to under the Act; that the answer to these questions hinges on whether or not Claimant's injuries arose out of and were within the scope and course of her employment; that the Defendants have stipulated that the Claimant was in the scope and course of her employment when the accident occurred; that Claimant failed to meet her burden of proof under S.C. Code Ann. §42-1-160 as to whether her injuries arose out of her employment; that the fact the syncopal event occurred while Claimant was working is not sufficient to meet the burden of proof required under S.C. Code Ann. §42-1-160; that Dr. Wagner evaluated Claimant and concluded his evaluation by saying, "ultimately, this is an unexplained syncopal event. It does not appear that the syncopal event was caused by any condition related to her employment. Although, the event did occur during her employment when she was traveling from one location to another"; that the Defendants cite Edge v Dunean Mills as supporting case law and that in that case, the Court concluded that Claimant's injuries were caused when he suffered an epileptic seizure at work and fell down a flight of stairs; that the Court in Edge v Dunean Mills denied benefits to the claimant where his injuries were caused by an attack of epilepsy; that as in Edge where the claimant fell down the stairs at work, the fact that Mrs. Baron suffered the syncopal event while driving to see patients is not sufficient to meet her burden as to "arising out of" under S.C. Code Ann. §42-1-160; and that the claim is not compensable under S.C. Code Ann. §42-1-160, thus the Claimant is not entitled to benefits under the Act. This appeal timely was timely filed thereafter.

EVIDENCE OF THE CASE

At the hearing before the Single Commissioner, the Commission's files and the Commissioner's notes were part of the record of the hearing without objection. Claimant's attorney called Claimant to testify. The Defendants called Penny Abbott to testify on behalf of Sanctuary Hospice.

Claimant testified that she is 71 years old. (Hrg. Trs. p. 11, line 22). She graduated as a Registered Nurse in 1962 and has been working as a Registered Nurse since that time. (Hrg. Trs. p. 12, lines 1-4). Claimant testified that she was injured in an automobile accident on May 21, 2012 on her way back to the office after visiting her last patient of the day. (Hrg. Trs. p. 12, lines 10-16). Claimant testified that she does not remember anything about the accident and the first thing that she remembers is opening her eyes after she hit a tree. She was able to get out of the car and walk several steps before her legs got shaky and she sat down. (Hrg. Trs. p. 13, lines 5-18).

Claimant testified that she hit her head in the accident and now has scars on her forehead and above her eye from the blow that she received to her head. (Hrg. Trs. p. 13, lines 19-25). Claimant testified that she has permanent nerve and muscle damage over the right eye with drooping eye lids that keep her from seeing clearly. (Hrg. Trs. p. 14, lines 8-13). She testified to short term memory loss as a result from the blow to the head. (Hrg. Trs. p. 15, lines 5-8). Further, she testified that she had a fracture of the left ankle that she had surgically repaired, a large hematoma on her right leg that had to be drained and a scar above her right eye. (Hrg. Trs. P. 16, lines 15-16).

Claimant has not returned to work since the accident in May 2012. (Hrg. Trs. p. 17, lines 7-9). She testified that she would be able to perform the nursing part of her job, but stated that

she has not driven since the date of her accident due to her eyesight. (Hrg. Trs. p. 17, lines 12-21). Finally, Claimant testified that she was not planning to retire prior to the accident, but that she was going from a full time to part time position following the vacation she planned to take after the accident. (Hrg. Trs. p. 20, lines 1-6).

On cross-examination, Claimant testified again that she cannot remember anything immediately prior to the accident. (Hrg. Trs. p. 21, lines 15-17). She stated that she was driving down the road and the next thing she knew; she was looking at the sky and the smoke. (Hrg. Trs. p. 22, lines 1-5). Claimant admitted that she was not planning to return to full duty work following the accident. (Hrg. Trs. p. 22, lines 6-9). She testified that she had talked to Sanctuary Hospice about working part time, but they did not have any set hours or set plans for her return to work. (Hrg. Trs. p. 22, lines 15-18).

Claimant again testified that she has been suffering memory loss since the accident. (Hrg. Trs. p. 23, lines 3-5). She indicated that she started noticing memory loss when she stopped taking pain pills. (Hrg. Trs. p. 23, lines 20-23). At this time, Claimant's deposition transcript was submitted into the evidence for purposes of impeachment. (Hrg. Trs. p. 24, lines 1-2). In her deposition, Claimant was asked whether she had any cognitive deficits to which she answered "I hope not. No, not that I know of." (Hrg. Trs. p. 25, lines 14-16). Claimant testified that no treatment has been recommended for her alleged memory loss and that she has not received any treatment for her alleged memory loss. (Hrg. Trs. p. 26, lines 12-15).

With regards to her right leg, Claimant testified that no additional treatment has been recommended. She last received treatment in August 2012 for her right leg. (Hrg. Trs. p. 27, lines 2-8).

Claimant testified that she has not contacted anybody at Sanctuary Hospice about the possibility of returning to work. (Hrg. Trs. p. 27, lines 21-23). She indicated that she did not contact Sanctuary Hospice because she could not drive, but admitted that she does not have any written driving restrictions from doctors. (Hrg. Trs. p. 28, lines 1-4). Claimant next testified that the car accident occurred on a Monday and that she was going to stop working as a full time employee of Sanctuary Hospice the following Friday. (Hrg. Trs. p. 29, lines 7-10). She was planning on taking two weeks of paid vacation and then would discuss with Sanctuary Hospice how many days she was going to work. (Hrg. Trs. p. 29, lines 20-24). Claimant testified that she assumed she would still be covering River Oaks following her return from vacation and that she would have worked three days a week on Mondays, Wednesdays and Fridays. (Hrg. Trs. p. 30, lines 22-25). Claimant testified that she likely would have worked six hours a day for the three days a week equaling a total of 18 hours per week. (Hrg. Trs. p. 34, lines 8-10).

On redirect examination, Claimant again testified that she was not planning to return to work full time following her vacation. However, she was not sure exactly how many hours she would have eventually been working because it would have depended on the number of patients that were admitted or actively dying. (Hrg. Trs. p. 35, lines 16-19).

Penny Abbott testified next on behalf of Sanctuary Hospice. Ms. Abbott testified that she is one of the principal owners and the director of community relations with Sanctuary Hospice. (Hrg. Trs. p. 38, lines 24-25). In that position, she is in charge of a lot of the decision making. (Hrg. Trs. p. 39, lines 1-3). It was her understanding that Claimant was not going to return to work full time following her vacation, but nothing was determined with regards to her exact schedule following vacation. (Hrg. Trs. p. 39, lines 8-15). At most, it was her understanding that Claimant would be working part time, but more likely she would have been just filling in.

(Hrg. Trs. p. 39, lines 23-25). According to Ms. Abbott, the maximum number of hours you can work per week and still be considered part time is 25 hours. (Hrg. Trs. p. 40, lines 1-4). Further, Ms. Abbott stated that the River Oaks position that Claimant indicated she was planning to return to part time would provide between 9 to 10 hours per week at the most. (Hrg. Trs. p. 41, lines 7-12).

On cross-examination, Ms. Abbott again stated that they had not discussed how frequently Claimant would be working following her vacation. (Hrg. Trs. p. 42, lines 1-10). Ms. Abbott admitted that Sanctuary Hospice does not have any part time employees, but that they were going to try to accommodate Claimant's request as she had worked for a long time. (Hrg. Trs. p. 43, lines 16-20). Ms. Abbott finally testified that Claimant was being paid \$25.00 an hour and would still be paid \$25.00 per hour if she worked part time. (Hrg. Trs. p. 45, lines 17-21).

On redirect examination, Ms. Abbott testified that the decision to move to part time was Claimant's decision. (Hrg. Trs. p. 46, lines 8-9). Further, she testified that part time positions are not eligible for medical benefits or paid time off. (Hrg. Trs. p. 46, lines 20-21).

The medical evidence indicates that EMS responded to the scene of Claimant's car accident on May 21, 2012. (APA 1, p. 2). It was noted that Claimant had a Glasgow Coma Scale of 15, a hematoma to above the right eye with bruising, a laceration to the right side above the eye, and no other abnormalities. (APA 1, p. 3). It was noted that there were no abnormalities with her mental status. (APA 1, p. 3).

Claimant was transported to Coastal Carolina Medical Center where she was diagnosed with a syncopal episode. (APA 2, p. 20). It was noted that she had a syncopal episode while driving and lost consciousness. She reported that she does not remember going off the road and believes that she was unconscious for ten minutes. (APA 2, p. 21). On May 23, Claimant was

again evaluated and she reported feeling well on the day of the accident when she suddenly lost consciousness and ran off the road into a tree. (APA 2, p. 25). Again, she was diagnosed with a syncopal episode. (APA 2, p. 26).

A CT scan was taken of her head on May 21, 2012 which showed no acute intracranial abnormality. (APA 2, p. 43). A CT scan was taken of her left ankle which showed a minimally displaced fracture of the medial malleolus. (APA 2, p. 52). An MRI of the brain showed no acute cerebral edema or infarct noted. (APA 2, p. 56).

Claimant began treating at Optim Orthopaedics for her left ankle fracture on May 24, 2012. (APA 3, p. 76). She reported that she either fell asleep at the wheel or passed out when she was involved in a motor vehicle accident. (APA 3, p. 76). She was diagnosed with a right ankle hematoma and a left ankle fracture and underwent surgery on May 29, 2012. (APA 3, p. 78-79). Claimant continued to treat with Optim Orthopaedics through September 10, 2012 at which point she was released to return to activities as she tolerates and instructed to return back only if any increased pain or problems. (APA 3, p. 82A).

Claimant treated with Coastal Carolina Hospital for wound care for her right ankle hematoma from May 31, 2012 to August 2, 2012. (APA 6, pgs. 124-308). On August 2, 2012, it was noted that her right ankle would be healed. (APA 6, p. 304).

Claimant was evaluated by Dr. Mark Wagner of the MUSC Department of Neurology on August 23, 2012. (APA 9, pgs. 328-335). Dr. Wagner was able to review all medical records from Coastal Carolina Medical Center, Jasper County EMS and Palmetto Eye Specialist. Further, Dr. Wagner interviewed and examined Claimant. (APA 9, p. 328). Dr. Wagner opined that Claimant experienced an unexplained syncopal event that was not caused by any condition relating to her employment. (APA 9, p. 335).

STANDARD OF REVIEW

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, make its own factual findings and legal conclusions consistent with or inconsistent with the Hearing Commissioner.

Based upon its review of all the evidence on the record in this case, the Panel hereby affirms the Order of the Hearing Commissioner in full. Accordingly, the Panel makes the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. The Claimant was in an automobile accident on May 21, 2012. This fact is not in dispute by either party.
2. The Claimant lost consciousness, ran off of the road and hit a tree. This fact is not in dispute by either party.
3. Dr. Scott Condie, the attending physician at Coastal Carolina Medical Center, opined that the Claimant suffered a syncopal event which resulted in the accident. Neither Dr. Condie nor Dr. MacCabe, to whom the Claimant was referred for a consultation, opine as to a cause for this syncopal event.
4. On the Form 58, the Claimant alleges injuries to her head/brain, eyes, face, both legs, both ankles, and both feet.

5. The questions at bar is whether Claimant's injuries are compensable and what benefits, if any, she is entitled to under the Act.
6. The answer to these questions hinges on whether or not Claimant's injuries arose out of and were within the course and scope of her employment.
7. The Defendants have stipulated that the Claimant was in the course of her employment when the accident occurred.
8. That being the case, the question as to compensability rests on whether or not the Claimant's injuries arose out of her employment.
9. It is on whether Claimant's injuries arose out of her employment that Claimant fails to meet her burden of proof under S.C. Code Ann. §42-1-160.
10. The fact that the syncopal event occurred while Claimant was working is not sufficient to meet the burden of proof required under S.C. Code Ann. §42-1-160.
11. The Claimant was evaluated by Mark Wagner, PhD., Clinical Neural Psychologist, Professor of Neurology, MUSC Department of Neurology, at the request of the Defendants on August 23, 2012. Dr. Wagner's report is part of the record at Defendant's APA No. 9, pages 328-335. Dr. Wagner concludes his evaluation by saying, "ultimately, this is an unexplained syncopal event. It does not appear that the syncopal event was caused by any condition related to her employment. Although, the event did occur during her employment when she was traveling from one location to another". This is based on Defendant's APA No. 9, p. 335.
12. The Defendant site Edge v. Dunean Mills as supporting case law. In that case, the Court concluded that Claimant's injuries were caused when he suffered an epileptic seizure at work and fell down a flight of stairs. The Court concluded by saying, "...

the only inference to be drawn from all of the testimony is that respondent's injury was caused by an attack of epilepsy."

13. The Court in Edge v. Dunean Mills denied benefits to the claimant where his injuries were caused by an attack of epilepsy.
14. As in Edge where the Claimant fell down the stairs at work, the fact Mrs. Baron suffered the syncopal event while driving to see patients is not sufficient to meet her burden as to "arising out of" under S.C. Code Ann. §42-1-160.
15. The claim is not compensable under S.C. Code Ann. §42-1-160 as it did not arise out of her employment.
16. As a result, the Claimant is not entitled to any benefits under the Act.

RULINGS OF LAW

Accordingly, as provided in S.C. Code §42-17-50 and pursuant to other applicable law, it is the determination of this Panel that:

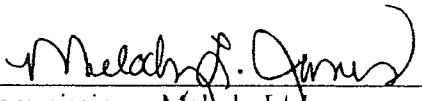
1. That under §42-1-160 and other applicable law, the Claimant did not sustain injuries by an accident arising out her employment.
2. That under §42-1-160, Claimant is not entitled to any benefits under the Act.

ORDER

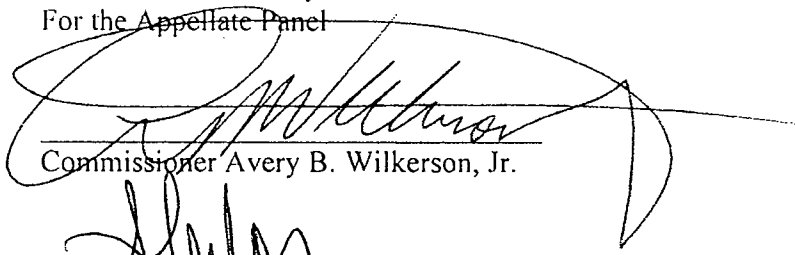
IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Single Commissioner's denial of this claim is **AFFIRMED IN FULL**.

AND IT IS SO ORDERED.

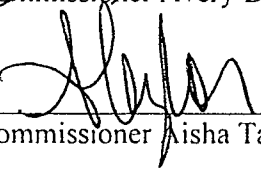
WE CONCUR:



Commissioner Melody L. James
For the Appellate Panel



Commissioner Avery B. Wilkerson, Jr.



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Valerie Deller on December 12, 2013

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