

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Civil Action No.: 2011-CP-23-7975
Appellate Case No.: 2012-212924
WCC File No.: 0622179

Jacqueline Y. Carter,

Respondent,

v.

Verizon Wireless and
American Home Assurance Co.,

Appellants.

RETURN TO APPELLANTS' PETITION FOR REHEARING

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Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Jacqueline Carter (“Respondent”), submits this Return to Appellants’ Petition for Rehearing. Specifically, Appellants’ assert this Court erred by failing to find there were intervening causes of Appellants’ change of condition which would serve to preclude Respondent from additional medical treatment. For the reasons discussed below, Appellants’ Petition for Rehearing should be denied.

As was argued in Respondent’s previous briefs to this Court and at oral argument, the position Appellants take in this Petition relative to the issue of intervening causes stands in complete contradiction to its position that there was no change of condition. Again - **it is not possible for something to be an intervening cause of a change of condition if the change of condition has not occurred.** Additionally, while Appellants argue that exercise in general during the summer of 2010 constituted an intervening cause, this was not what the Commission found. Rather, the Commission was very specific in citing Zumba classes and Respondent’s broken right ankle as being the supposed intervening causes of the change in her condition in this instance. R.pp. 23, 24. Thus, this Court may only decide whether there is evidence to support the finding that Zumba and a prior broken ankle were intervening causes.

Other than water aerobics, the only other exercise Respondent ever *attempted* was “Zumba” class, which she testified is a “cardio dance class.”¹ R.p. 91. According to Respondent, she wanted to try “Zumba” to work on her upper body because it has arm

¹ Respondent testified she lost 48 pounds since the summer of 2010. R.p. 96. According to Respondent, she did this in part by participating in water aerobics beginning in June 2010 - something she had been previously prescribed by Dr. Grady following her knee surgery. R.p. 88. Respondent did not participate in any other exercises other than water aerobics. R.p. 99. Dr. Grady testified that if one of his patients with a knee injury like Respondent’s is going to do exercise, “you want them to do it in the water” because “you have less of an impact loading” in that “[t]he buoyancy of the body in the water . . . helps you out.” R.p. 102. Dr. Grady agreed that Respondent’s weight loss “is going to do nothing but help her out.” R.p. 103.

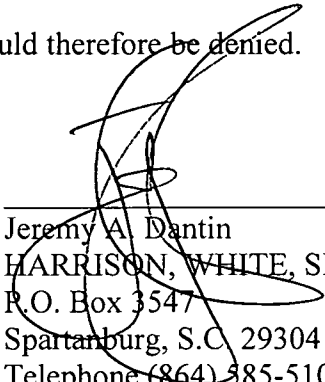
movements that mimic boxing. R.pp. 91-92. Respondent explained that the upper body movements were the only movements she could perform – she specifically testified that she was not able to perform any of the dance moves or get on the floor during “Zumba.” R.p. 92. Respondent further testified that she could not stand for the entirety of a “Zumba” class, and ultimately decided to stop attending that class as it was not benefitting her because she could not perform any of the other movements. R.p. 92. Respondent participated in only three “Zumba” classes in this limited manner, and all of those classes were attended after she saw Dr. Grady on November 4, 2010, the date on which he found she had suffered a change of condition. R.pp. 91-104.

There is no evidence to contradict any of the aforementioned testimony by Respondent on the issue of “Zumba.” There is no testimony that “Zumba” hurt Respondent or changed her condition in any way. There is no medical opinion stating that “Zumba” was an independent, intervening event. To the contrary, Dr. Grady testified: “I think overall the progression from when I initially did her surgery to the point where I saw her [on November 4, 2010] – where I noted the changes here, I think that was expected” R.p. 119. Moreover, the evidence establishes that Respondent had not participated at all in any “Zumba” class prior to November 4, 2010, meaning that “Zumba” had no bearing at all on Dr. Grady’s opinions in this matter. Therefore, there is no support for the finding that “Zumba” was an intervening cause of Respondent’s change of condition.

Respondent broke her ankle in February 2009. She had a hearing on her workers’ compensation claim on October 15, 2009. No assertion was made by Appellants at the 2009 hearing that Respondent’s right ankle fracture in any way constituted an intervening

cause of her left leg problems. In fact, Respondent testified in that hearing her right ankle fracture did not hinder her ability to walk, and that her right ankle fracture was “fully healed.” R.p. 113. In the hearing regarding her change of condition in 2011, Respondent explained that after her ankle fracture, she was not putting any weight on her left knee because she was in a wheelchair for six to eight months. R.p. 98. There is no other evidence in the record on this issue, including no opinion from Dr. Grady or any other doctor stating that Respondent’s February 2009 ankle fracture in any way affected her left leg, much less rose to the level of an intervening cause of her change of condition. Thus, there is no evidence in the record upon which a finding of an intervening cause of Respondent’s change of condition can be based.

In view of the foregoing, Respondent asserts there is no merit to Appellants’ Petition for Rehearing and that it should therefore be denied.



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March 12, 2014

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WORKERS' COMPENSATION COMMISSION

Civil Action No.: 2011-CP-23-7975
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Jacqueline Carter,

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v.

Verizon Wireless Southeast, and
American Home Assurance Company,

Appellants.

PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing on the above-named Appellants, Verizon Wireless Southeast and American Home Assurance Company, this 12th day of March 2014, by depositing the same in the United States Mail, first class postage prepaid, addressed to their attorneys of record, as follows:

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March 12, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Jacqueline Carter v. Verizon Wireless Southeast
Appellate Case No.: 2012-212924
WCC file No.: 0622179

Dear Ms. Kitchings:

Enclosed is the original and seven (7) copies of the Return to Petition for Rehearing, as well as the Proof of Service. Please return one clocked copy to us in the enclosed self-addressed envelope.

By copy of this letter, we are serving the defendant's attorney with copies of these documents.

Sincerely,


Jeremy A. Dantin

JAD/nmp
Enclosures

cc: Grady L. Beard, Esq.
Nicolas L. Haigler, Esq.

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