

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

FILE NO.: 1108433

April Mauldin, Employee-Claimant,

Respondent,

vs.

Caring Hearts Home Care, Employer-Defendant,

and

Guaranty Fund, Carrier-Defendant,

Appellants.

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APR 07 2014

SC Court of Appeals

Appellate Panel Review Held in Columbia,
South Carolina on November 19, 2013, per notice timely
and properly served upon all parties of interest.

Appearances: Kathryn Williams, Esq. of Kathryn Williams, P.A. of Greenville,
South Carolina for claimant

Peter Leventis, IV, Esq. of McKay, Cauthen, Settana & Stublely,
P.A. of Columbia, South Carolina for defendants

Purpose: Appellate Panel Review of issues set forth on defendants' Form 30
Request for Commission Review

Filed:

March 7, 2014

STATEMENT OF CASE

This claim came before the Single Commissioner on October 24, 2012 on claimant's Form 50 seeking benefits for injury by accident. Claimant sought benefits for an injury by accident she sustained on February 14, 2011 while working for employer-defendant causing injury to her left leg, right leg, left wrist, and psyche. Claimant sought medical treatment and temporary total disability benefits from February 14, 2011 to the present and continuing. Finally, claimant asserted she had not reached maximum medical improvement and did not request a determination of permanency at the Single Commissioner hearing.

Defendants denied claimant was entitled to compensation contending her motor vehicle accident and subsequent injuries did not arise out of the course and scope of employment. Although defendants denied compensability, defendants stipulated if the claim was found compensable that the left leg, right leg, and left wrist are causally-related. Defendants also stipulated if the claim was found compensable that claimant is entitled to medical treatment and temporary total disability benefits from February 14, 2011 to the present and continuing.

Prior to the taking of testimony, the parties agreed to hold the determination of psyche in abeyance.

By Order filed December 21, 2012, Commissioner Susan S. Barden determined claimant sustained a compensable injury by accident arising out of and in the course of her employment. The Single Commissioner ordered defendants to provide claimant with temporary total disability benefits and causally-related medical expenses from February 14, 2011 to the present and continuing. The Single Commissioner also ordered

defendants to provide claimant with further evaluation and treatment with an orthopedist until she reaches maximum medical improvement. Within the statutory period, defendants filed an Application for Review of this claim.

All proffered testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration.

EVIDENCE OF THE CASE

At the hearing before the Single Commissioner, the following summarized evidence was presented:

Claimant testified she worked for employer-defendant for 4 years as a Personal Care Aide, which required her to provide in-home caregiver services to regularly scheduled clients. Claimant testified her job duties required assisting clients with activities of daily living such as bathing, cooking, cleaning, helping with medicines, and transportation to stores and doctor's appointments. Claimant testified that traveling to a client's home was an integral part of the service provided by employer-defendant and required her to travel from one client's home to another throughout the day. Claimant testified she was required to call employer-defendant from each scheduled client's home to verify her presence and provision of service as all care is provided in clients' homes. Claimant also testified she followed a previously set schedule of clients she visited on a regular basis and the clients expected her at specifically scheduled times.

Claimant testified that on February 14, 2011, after providing scheduled care at a client's home, she proceeded directly from that client's home to another. Claimant testified that while traveling directly to the next client's home, she had a motor vehicle

accident, sustaining injury to her left leg, right leg, and left wrist. Claimant testified that the motor vehicle accident happened while traveling in order to perform her job duties and that she did not detour or stop anywhere between the clients' homes.

The medical records show Greenville County EMS responded to the scene of the motor vehicle accident on February 14, 2011 and transported claimant to Greenville Memorial Medical Clinic. Upon admission to Greenville Memorial on February 14, 2011, claimant underwent surgery to repair a left scaphoid fracture, right medial plateau fracture, right medial calcaneus and medial ankle wound, and left open ankle bimalleolar fracture-dislocation. Subsequently, Dr. Alan Hippensteal opined in his February 18, 2011 consultative note that claimant will need to remain non-weight-bearing and limited to wheelchair mobility. Upon claimant's February 23, 2011 discharge, the medical records show claimant continued to remain non-weight-bearing on her bilateral lower extremities and left upper extremity.

The medical records show claimant continued to treat as an inpatient with the Greenville Hospital System's Subacute Unit. On a March 10, 2011 assessment, the Unit noted that requested home health services would not be accessible for claimant due to lack of funding and location.

Claimant continued to experience leg and wrist pain as Greenville Memorial Medical Center noted on May 29, 2012 that claimant could not wait another month for her scheduled orthopedic appointment due to increased pain. The medical records show claimant presented to Dr. Benjamin Barden on June 8, 2012 for persistent right knee, left ankle, and left wrist pain. Dr. Barden opined that the left wrist pain stemmed from loose hardware which would likely require revision fixation surgery. Additionally, Dylan

Watson, APRN, FNP, stated that claimant's February 2011 injury was the instigating factor that kept her from being able to work.

Sherril McCoy, employer-defendant's owner, testified the purpose of her business is to provide assisted living type care to clients in their own homes. McCoy testified that employees receive a previously scheduled list of clients to visit each day but not particular times. McCoy testified that although employees are not reimbursed for mileage nor provided a work vehicle, they are furnished driving directions to locate the clients' homes and expected to travel from home to home throughout the day to accomplish work duties.

Jennifer Bishop, the daughter of an employer-defendant client, testified that her mother once used the services of employer-defendant performed by claimant. Bishop also testified that she expected the claimant on a specific schedule and at specific times throughout the week to provide care.

DECISION

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

Based upon its review of all the evidence on the record in this case, the Panel hereby **fully affirms** the Order of the Single Commissioner in its entirety and adopts the Single Commissioner's Findings of Fact and Rulings of Law.

The Panel makes the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. An employee/employer relationship existed between the parties at the time of claimant's injuries.
2. Claimant alleges that she injured her left leg, right leg, and left wrist in a work-related accident on February 14, 2011. Although defendants deny the claim is compensable, defendants stipulate that these, and only these, body parts are causally-related.
3. Claimant also alleges causally-related psychological overlay. The parties stipulate the issue of psychological overlay is held in abeyance pending further Order of the Commission or agreement of the parties.
4. Claimant's average weekly wage is \$258.52, for a corresponding compensation rate of \$172.35.
5. Claimant is 30 years of age. This finding is based on the testimony of the claimant.
6. Claimant is a high school graduate. She also studied for 2 years at Greenville Technical College. This finding is based on the testimony of the claimant.
7. On the date of the accident, claimant was a 3- to 4- year employee of employer-defendant. This finding is based on the testimony of the claimant and claimant's APA #5, page 105.

8. Claimant's job with employer-defendant required her to provide in-home caregiver services. This work necessitated claimant's travel from one client's home to another as claimant traveled from one assignment to the next during her workday.

9. Claimant was not traveling from her residence to the first scheduled client's home when the accident occurred. Nor was claimant traveling to her residence from the last scheduled client's home when the accident occurred.

10. Claimant did not undertake any deviation when her accident occurred. When the accident occurred, claimant was proceeding directly from one client's home to another.

11. The undersigned are fully cognizant of the fact that employer-defendant did not provide fuel, a vehicle, or reimbursement for mileage; nor did employer-defendant provide claimant actual compensation for time spent traveling. However, the undersigned finds that claimant was required to drive – or otherwise be in – a vehicle periodically throughout her workday in order to perform the tasks assigned to claimant by employer-defendant.

12. The undersigned do not find credible the testimony of owner McCoy that claimant was not required to appear at a client's home at a particular time. The undersigned finds that the claimant had scheduled hours at each assignment during which claimant was expected to work. Whether or not claimant was technically compensated for the travel, an integral part of claimant's job was to travel to each client's home in order to arrive at the previously scheduled time.

13. Although owner McCoy may not have dictated the route claimant took, McCoy did provide claimant with a Map Quest sheet containing directions for each client.

14. The undersigned finds that the "going and coming rule" barring compensation does not apply.

15. The undersigned finds that Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964), applies inasmuch as when the accident in issue occurred, claimant was at a place, en route to a client's home from another client's home, where claimant was reasonably expected to be in order to fulfill those duties required of her by employer-defendant.

16. An integral part of claimant's job was to travel from assignment to assignment.

17. Claimant shall receive temporary total disability benefits from February 14, 2011 to the present and continuing.

18. Claimant shall receive causally-related medicals.

19. Claimant shall receive an evaluation and appropriate treatment with an orthopedist until she reaches maximum medical improvement.

20. Claimant has not reached maximum medical improvement.

21. A determination of permanency is premature.

RULINGS OF LAW

1. Under S.C. Code Ann. §§ 42-1-130 to -150, the South Carolina Workers' Compensation Commission has jurisdiction over claimant's claim for benefits.

2. Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, claimant's average weekly wage is \$258.52, for a corresponding compensation rate of \$172.35.

3. Under S.C. Code Ann. § 42-1-160, claimant sustained compensable injury by accident arising out of and in the course of her employment with employer-defendant on February 14, 2011 causing injury to her left leg, right leg, and left wrist.

4. Under S.C. Code Ann. § 42-15-20, claimant timely reported her left leg, right leg, and left wrist injuries to employer-defendant.

5. Claimant has not reached maximum medical improvement from her injuries. See Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct.App.1999)(maximum medical improvement is plateau at which no further medical care or treatment will lessen the degree of impairment).

6. Under S.C. Code Ann. § 42-15-60, claimant is entitled to and employer-defendants are responsible for all causally-related medical evaluations and treatment expenses from February 14, 2011 to the present and continuing.

7. Under S.C. Code Ann. §§ 42-1-120 and 42-9-10, claimant is entitled to and employer-defendants are responsible for temporary total disability compensation benefits from February 14, 2011 to the present and continuing at the compensation rate of \$172.35 until further Order of the Commission or agreement of the parties.

ORDER

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner is hereby affirmed in its entirety.

IT IS FURTHER ORDERED that defendants shall make the following payments and provide the following treatment:

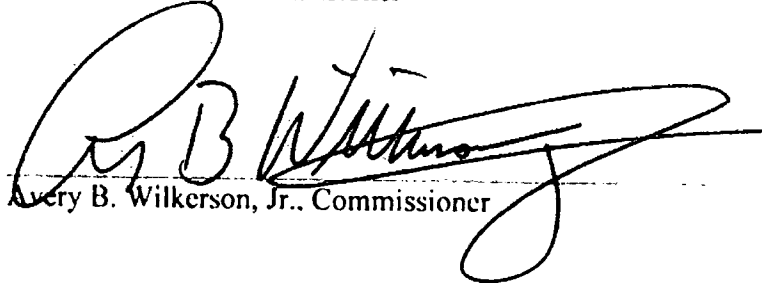
1. All causally-related medical treatment and expenses from February 14, 2011 to the present and continuing.
2. An evaluation and appropriate treatment with an orthopedist until she reaches maximum medical improvement.
3. Temporary total disability benefits at the rate of \$172.35 per week from February 14, 2011 to the present and continuing until further Order of the Commission or agreement of the parties. All payments shall be made to claimant through her attorney's office.

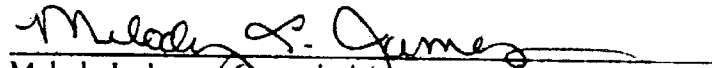
AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION


Gene McCaskill, Commissioner

CONCUR:


Avery B. Wilkerson, Jr., Commissioner


Melody L. James, Commissioner

Date: March 7, 2014
Columbia, South Carolina

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 Eugenia Hollmon on March 7, 2014