

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC Case No. 0726308

Case No.

72600

Shannon Cook, Employee/Claimant..... Respondent,

v.

Spartanburg Steel Products, Inc., Employer

and

Hartford Insurance Company of the Midwest c/o
Sedgwick Claims Management Services, Inc., Carrier Appellants

NOTICE OF APPEAL

Appellants Spartanburg Steel Products, Inc. (Employer) and Hartford Insurance Company of the Midwest c/o Sedgwick Claims Management Services, Inc. (Carrier), by and through their undersigned attorney, do hereby appeal from a Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission.

Appellants submit that the South Carolina Workers' Compensation Commission erred in concluding that Respondent sustained a change of condition for the worse, pursuant to South Carolina Code Annotated Section 42-17-90. Moreover, Appellants submit the Commission erred

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in considering Respondent's application for review of an award on a change of condition because it was not timely filed pursuant to Section 42-17-90 and further did not meet the procedural requirements as set forth in Regulation 67-602(C).

The Commission's Order was filed May 20, 2014, and was received by the undersigned on the same date. The Commission's Order is appealed on the following grounds:

1. The South Carolina Workers' Compensation Commission erred in Finding of Fact No. 6, wherein it found Respondent's previous counsel, Mr. Gagne, timely filed a Form 50 on May 9, 2012, alleging a change of condition for the worse, when such a factual finding is against the reliable, probative, and substantial evidence in the record and is not supported by South Carolina law.

2. The South Carolina Workers' Compensation Commission erred in Finding of Fact No. 7, wherein it found Respondent's current counsel, Mr. Montgomery, filed a Form 50 on May 17, 2013, requesting a hearing on the change of condition for the worse, when such a factual finding is against the reliable, probative, and substantial evidence in the record.

3. The South Carolina Workers' Compensation Commission erred in Finding of Fact No. 8, wherein it found, pursuant to Section 42-17-90 and a sequential review of treatment records dated after the hearing before Commissioner Wilkerson, that Respondent's lumbar spine condition had significantly worsened and that Defendants had notice of Claimant's worsening condition, when such a factual finding is against the reliable, probative, and substantial evidence in the record.

4. The South Carolina Workers' Compensation Commission erred in Finding of Fact No. 9, wherein it found that three authorized physicians stated that Claimant had sustained a

change of condition for the worse, that Respondent needed further surgery, and that there was no competing questionnaire or evidence to the contrary, when such a factual finding is against the reliable, probative, and substantial evidence in the record.

5. The South Carolina Workers' Compensation Commission erred in Finding of Fact No.10, wherein it found the questionnaires referenced *supra* were clearly supported by the treatment records in evidence and thus accorded the questionnaires great weight, when such a factual finding is against the reliable, probative, and substantial evidence in the record and when the Commission failed to consider the timeliness of the physicians' opinions pursuant to South Carolina law.

6. The South Carolina Workers' Compensation Commission erred in Finding of Fact No.11, wherein it found "At the hearing, [Respondent] appeared to be in genuine discomfort, a presentation which did not appear to be feigned or contrived. We considered the fact that Dr. Kanos found some "exaggerated response" during his exam of [Respondent], but given the fact that there is objective pathology after both an MRI and a CT myelogram (such that three physicians, including Dr. Kanos, recommend surgery), we find that Respondent may be merely appealing for help. Moreover, [Respondent] has not exaggerated his condition to authorized treating physicians; in fact, the opposite is true. To treating physicians, [Respondent] volunteered the fact that he went out to dinner and a movie with his son, and that he is "trying to do some walking and he is praised." If [Respondent] were being untruthful about his condition, it would have been far more expedient for him to claim he cannot go anywhere or do anything . . . ,," when such a finding is against the reliable, probative, and substantial evidence in the record.

7. The South Carolina Workers' Compensation Commission erred in Finding of Fact No.12, wherein it found there was no dispute that Respondent now needs surgery, when such a finding is against the reliable, probative, and substantial evidence in the record.

8. The South Carolina Workers' Compensation Commission erred in Finding of Fact No.13, wherein it found Respondent had not reached maximum medical improvement, when such a finding is against the reliable, probative, and substantial evidence in the record.

9. The South Carolina Workers' Compensation Commission erred in Finding of Fact No.15, wherein it found Respondent shall receive reimbursement for the CT Myelogram and visits with Dr. Kanos, when the reliable, probative, and substantial evidence in the record suggests Respondent has reached maximum medical improvement and has not sustained a change of condition for the worse.

10. The South Carolina Workers' Compensation Commission erred in Finding of Fact No.16, wherein it found Dr. Kanos should be named the treating surgeon, when the reliable, probative, and substantial evidence in the record suggests Respondent has reached maximum medical improvement and has not sustained a change of condition for the worse.

11. The South Carolina Workers' Compensation Commission erred in Finding of Fact No.17, wherein it found permanency was premature, when the reliable, probative, and substantial evidence in the record suggests Respondent has reached maximum medical improvement and has not sustained a change of condition for the worse.

12. The South Carolina Workers' Compensation Commission erred in Finding of Fact No.18, wherein it found the opinion from Dr. Rana was not inadmissible and went on to note "he opines that [Respondent] sustained a change of condition to the spine. Whether or not Dr. Rana

found [Respondent] to be at maximum medical improvement is not dispositive any more than is a statement by a physician to a reasonable degree of medical certainty that a claimant has sustained a repetitive trauma injury. Otherwise, the Commission's involvement would be unnecessary. Dr. Rana does opine that [Respondent] has an "additional" problem of thoracic spine involvement but; whether or not the Commission or any other physician agrees with that statement is a merits issue for adjudication. The undersigned is unwilling to "punish" [Respondent] for any deficiencies with regard to Dr. Rana's record/opinion, when the authorized treatment records clearly support an opinion of a worsened condition . . . ,” when such a finding is against the reliable, probative, and substantial evidence in the record and is not supported by South Carolina law.

13. The South Carolina Workers' Compensation Commission erred in Finding of Fact No.19, wherein it found Appellants' video surveillance did nothing to persuade it to deviate or retreat from its decision, when the reliable, probative, and substantial evidence in the record suggests Respondent has reached maximum medical improvement and has not sustained a change of condition for the worse.

14. The South Carolina Workers' Compensation Commission erred in Finding of Fact No. 22, wherein it found the Respondent was entitled to additional medical treatment through Dr. Kanos, including but not limited to surgery, as it was causally related to the underlying injury, medically necessary and would tend to lessen the period of disability, when the reliable, probative, and substantial evidence suggests Respondent has reached maximum medical improvement and has not sustained a change of condition for the worse.

15. The South Carolina Workers' Compensation Commission erred in Conclusion of Law No. 1, wherein it concluded Respondent sustained a change of condition for worse, when such a conclusion of law is against the reliable, probative, and substantial evidence in the record, is based upon erroneous factual findings, and is not supported by South Carolina law.

16. The South Carolina Workers' Compensation Commission erred in Conclusion of Law No. 2, wherein it concluded Respondent's previous counsel timely filed an application for a change of condition when such a conclusion of law is against the reliable, probative, and substantial evidence in the record, is based upon erroneous factual findings, and is not supported by South Carolina law.

17. The South Carolina Workers' Compensation Commission erred in Conclusion of Law No. 3, wherein it concluded that all applicable time limits in S.C. Code Ann. § 42-17-90 were tolled, or satisfied, when Respondent filed his Form 50 on or about May 9, 2012, when such a conclusion of law is against the reliable, probative, and substantial evidence in the record, is based upon erroneous factual findings, and is not supported by South Carolina law.

18. The South Carolina Workers' Compensation Commission erred in Conclusion of Law No. 4, wherein it concluded Dr. Rana's opinion was based enough on fact to create an issue as to the merits to be adjudicated and did not preclude Respondent from pursuing a change of condition request, when such a conclusion of law is against the reliable, probative, and substantial evidence in the record, is based upon erroneous factual findings, and is not supported by South Carolina law, including, but not limited to, the case of Young v. Tide Craft, Inc., 270 S.C. 453, 468, 242 S.E.2d 671, 678 (1978).

19. The South Carolina Workers' Compensation Commission erred in Conclusion of Law No. 5, wherein it concluded the case at bar was not precluded from being brought for a change of condition pursuant to the South Carolina case of Allen v. Benson Outdoor Advertising Co. 236 S.C. 22; 112 S.E2d 722 (1960), when such a Conclusion of Law is against the reliable, probative, and substantial evidence in the record, is based upon erroneous factual findings and misinterpretation of one portion of the Allen case, and is not supported by South Carolina law.

20. The South Carolina Workers' Compensation Commission erred in Conclusion of Law No. 6, wherein it concluded Respondent was entitled to additional medical treatment with Dr. Charles Kanos, as it was medically necessary, casually related and would tend to lessen the period of disability, when such a Conclusion of Law is against the reliable, probative, and substantial evidence in the record and is based upon erroneous factual findings.

21. The South Carolina Workers' Compensation Commission erred in Conclusion of Law No. 7, wherein it concluded Respondent was entitled to reimbursement of expenses and co-pays associated with medical treatment with Dr. Kanos and that such treatment was causally related, medically necessary and would tend to lessen his period of disability, when such a Conclusion of Law is against the reliable, probative, and substantial evidence in the record and is based upon erroneous factual findings.

22. The South Carolina Workers' Compensation Commission erred in ordering that Appellants should reimburse Respondent for any and all expenses associated with medical treatment as directed by or provided by Dr. Kanos, when such an order is against the reliable, probative, and substantial evidence in the record and is based upon erroneous factual findings and conclusions of law.

23. The South Carolina Workers' Compensation Commission erred in ordering that Appellants should provide ongoing medical care through Dr. Kanos, when such an order is against the reliable, probative, and substantial evidence in the record and is based upon erroneous factual findings and conclusions of law.

24. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that the Commission lacked jurisdiction to hear Respondent's change of condition claim, when such a finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

25. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that Respondent's change of condition claim is barred by South Carolina Code Ann. § 42-17-90, when such a finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

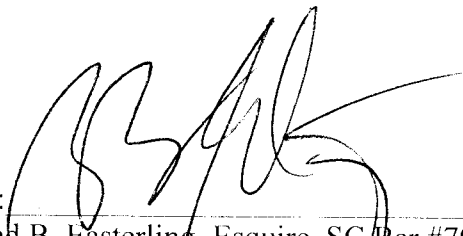
26. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that the medical report of Dr. Tony Rana, dated February 16, 2012, which Respondent relies upon to support his change of condition relative to his lumbar spine, was nebulous and inherently indicated no change of condition, when such a finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

27. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that Respondent's change of condition claim was barred by South Carolina Regulation 67-602, when such a finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

28. The South Carolina Workers' Compensation Commission erred in failing to find as a fact that the questionnaires of Dr. Rodriguez, Dr. Kanos, and Dr. LaTourette, referenced above, were not completed until well after the twelve month limitations period set forth in S.C. Code § 42-17-90 had run.

29. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that Respondent failed to sustain his burden of proof in establishing that he sustained a compensable change of condition related to his September 17, 2007 workplace accident, when such a finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

June 18, 2014


By: _____
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

WCC File No. 0726308

Case No.

Shannon Cook, Employee/Claimant..... Respondent,

v.

Spartanburg Steel Products, Inc., Employer

and

Hartford Insurance Company of the Midwest c/o
Sedgwick Claims Management Services, Inc., Carrier Appellants

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the attorney of record for Shannon Cook, by depositing a copy of it in the United States Mail, postage prepaid, on the 18th day of June, 2014 addressed to his attorney of record and to the South Carolina Workers' Compensation Commission:

Ryan S. Montgomery
Ryan Montgomery Attorney at Law, LLC
108 Mills Avenue
Greenville, South Carolina 29605

Judicial Director
South Carolina Workers' Compensation Commission
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REPLY TO

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June 18, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RE: Shannon W Cook vs. Spartanburg Steel Product and Hartford Insurance
Company of the Midwest c/o Sedgwick Claims Management Services, Inc.
Date of Accident: September 17, 2007
WCC File No.: 0726308
Our File No.: 20194.14124
Claim No.: YDS65635

Dear Ms. Kitchings:

Enclosed for filing in the above referenced matter are a Notice of Appeal and Proof of Service, and the required filing fee together with a copy of the Orders being appealed. By copy of this letter, I am filing copies of the same documents with the South Carolina Workers' Compensation Commission.

Also, by copy of this letter, I am serving a copy of the same on Ryan Montgomery, Esquire, attorney for the Claimant.

If you have any additional questions regarding the enclosed information, please do not hesitate to contact me.

With kindest regards,

Very truly yours,


Brad B. Easterling

BBE/rhd
Enclosures
cc: Ryan Montgomery
Judicial Director, SCWCC
Beth Padgett
John Nelson

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