

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2013-000414

172965

Tina Mayers,..... Appellant

v.

OSI Group, LLC/Amick Farms, and Federal Insurance Company, ..Respondents

PETITION FOR REHEARING

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The Appellant by and through her undersigned counsel and pursuant to Rule 221(a) of the South Carolina Appellate Court Rules hereby request that the court rehear the above reference matter, as it relates to the Court's affirming the Appellate Panel of the Workers' Compensation Commission finding that Appellant failed to satisfy the compensability requirements for a repetitive trauma injury pursuant to S.C. Code § 42-1-172. This request is based upon the following:

The Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission affirmed in part and reversed in part the Single Commissioner's Findings of Fact and Ruling of Law. The Appellate Panel affirm the denial by the Single Commissioner of Claimant's claim on the alternative ground that Claimant failed to satisfy the compensability requirements of S.C. Code §42-1-172.

This finding was based upon the Appellate Panel's erroneous finding of fact that Dr. Gray's statement of causation was "erroneously premised" in that it was based upon Claimant's statement to Dr. Gray that she had no prior carpal tunnel syndrome problems. The Appellate Panel find this to be incorrect history provided by Claimant to Dr. Gray which was fatal and too significant to overlook. This was the basis for finding Dr. Gray's opinion did not establish a direct causal relationship between the condition under which the work was performed and the injury.

While an appellate court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency's findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Workers' compensation awards must not be based on surmise, conjecture or speculation. Tiller v. National Health Care Center of Sumter, 513 S.E. 843, 845 (S.C. 1999).

Claimant was first diagnose with Carpal Tunnel Syndrome on or about November 18 , 2009 after treatment for loss of feeling and pain in her hands at Self Regional Healthcare in Greenwood, South Carolina. (R. p. 87). Claimant was employed at Amick Farms at the time and held the job title of Tray Packer on the third shift, which was from 11:30 p.m. to 8:30 a.m. each day on a five day work week. (R. p. 31, lines 8-9-p. 35, lines 3-4). Claimant testified that she had no prior problems with her hands or wrists prior to her

employment with Amick Farms. (R. p. 32, lines 8-17). There is no evidence in the record that shows any problems with both hands or waists prior to November 18, 2009. The finding by the Commission was based upon two small notations made in the medical reports of November 18, 2009 that indicated Claimant had a prior history of carpal tunnel syndrome. (R. p. 86, 89). Claimant denied making such statements and no testimony was put forth by the employer to dispute Claimant's denial. (R. p. 43, lines 19-25-p. 44, lines 1-25). The further finding by the Appellate Panel that Claimant was treated for a overuse injury on May 2, 1997 not only being remote in time was also inaccurate in it's depiction of the type of injury, body part affected and it's duration. It was an injury to claimant's right arm, shoulder and wrist, with her chief complaint being her right arm. (R. p. 99). This injury occurred at a previous employment at which she had worked only one week when she presented to the emergency room at Self Memorial Hospital'. (R. p. 99). She did not return for any further treatment after that initial visit. There is no mention in the medical records related to the May 2, 1997 visit of any diagnose of carpal tunnel syndrome, bilateral or otherwise.

The Claimant presented to Newberry Hospital on January 28, 2008, complaining of pain and swelling in her left arm which started 1 ½ weeks prior. (R. p. 100). Claimant was diagnose with Bursitis left shoulder. (R. p. 101). She reported at the time that she had lifted a patient a week or so ago and now has pain and swelling to her left arm. (R. p. 102). The medical record shows that the Claimant presented with no "chest pain, difficulty breathing, sensory loss, motor loss or repetitive hand use at work." (R. p. 100).

Prior to Claimant's employment with Amick Farms the Claimant was a Certified Nursing Assistant for ten(10) years. (R. p. 31, lines 10-25-p. 32, lines 1-4). There was no repetitive hand use required at her previous employment of 10 years. Repetitive trauma injuries have a gradual onset caused by the cumulative effect of repetitive traumatic events or mini-accidents. Schulknicht v. City of North Charleston, 352 S.C. 175, 176, 574 S.E. 2d 194, 195 (S.C. 2002); S.C. Code Ann. § 42-1-172. The Claimant had no such problems at her previous employment and presented to the hospital only once complaining of injury to her left shoulder which was diagnosed as Bursitis left shoulder, on January 28, 2008. (R. p. 101).

Prior to July 2009 the Claimant's medical records and the record as a whole do not support the conclusion that Claimant was diagnose with carpal tunnel syndrome prior to November 2009.

As stated above, workers' compensation awards must not be based on surmise, conjecture or speculation. Tiller v. National Health Care Center of Sumter, 513 S.E. 843, 845 (S.C. 1999). The Appellate Panel findings relating to the diagnose of carpal tunnel syndrome, prior to November 2009, have no basis in fact and fall squarely within the realm of conjecture and /or speculation.

A repetitive trauma injury is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury." S.C. Code § 42-1-172. Dr. Gray in his opinion directly addressed whether the work Claimant was performing was the direct cause of her carpal tunnel syndrome. He stated that "it is my opinion, with a reasonable degree of medical certainty, that her carpal tunnel syndrome is a result of her working at Amick Farms." (R. p. 82). The Appellate Panel finding that the claimant failed to meet her burden to establish a repetitive trauma injury pursuant to Section 42-1-172, is not supported by the substantial evidence in the whole record. (R. p. 11, para. 9).

The Appellate Panel's findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the record and as such this court may substitute its judgment for that of the Appellate Panel and find that claimant met her burden to establish a repetitive trauma injury pursuant to S.C. Code § 42-1-172. Tiller v. National Health Care Center of Sumter, 513 S.E. 843, 845 (S.C. 1999).

CONCLUSION

Therefore, the Appellant request that the Court reverse it's ruling affirming the Appellant Panel's ruling, and instead hold that the Appellant had met her burden to establish a repetitive trauma injury pursuant to S.C. Code §42-1-172.

July 22, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles E. Johnson", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Charles E. Johnson, Attorney for the Appellant, hereby certify that a copy of the within Petition for Rehearing, was duly served by depositing said papers in United States Mail, Postage Prepaid, Return Address clearly indicated on the envelope, addressed to the Attorneys for the Respondent, listed below:

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