

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
C/A NO. 2011-CP-38-00690

LEE B. JEFFREY, SR.,)
)
Employee/Claimant,)
)
Appellant,)
)
v.)
)
SUNSHINE RECYCLING,)
)
Employer,)
)
and)
)
CAPITAL CITY INSURANCE,)
)
Carrier,)
)
Defendants/Respondents.)
_____)

ORDER

This matter came to be heard by me on November 25, 2013 in Orangeburg, South Carolina on the basis of an Appeal filed by the Claimant/Petitioner from the Decision of the South Carolina Workers' Compensation Commission. The Claimant/Petitioner was represented at the hearing by Preston F. McDaniel, Esquire of the Richland County Bar. The Defendants/Respondents were represented by Grady L. Beard and B. Gibbs Leaphart, Jr., Esquire both of the law firm of Sowell, Gray, Stepp & Laffitte, LLC and both members of the Richland County Bar.

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After due deliberation, Record as cited to the Court, review of the memoranda, case law, exhibits and arguments of counsel, the decision of the Commission is reversed.

The facts are undisputed between the parties. The issue before the Court is whether the events whereby Mr. Jeffery was injured constitute an accident within the meaning of South Carolina's Workers' Compensation Act. The compensability of a particular event as an accident within the purview of the Act is a question of law to be decided by the courts. Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120 (1977). (At the hearing upon inquiry by the Court, the parties agreed with this proposition and that this is a question of law for decision by this Court.) The Court may overturn the Commission's ruling when affected by an error of law. Stone v. Traylor Bros. 360 S.C. 271, 600 S.E.2d 551 (Ct. App. 2004).

Because Mr. Jeffery had previously suffered a back injury which had substantially limited his capacity to safely lift heavy objects, Sunshine hired him to perform duties which would not require heavy lifting. It is undisputed that Sunshine was aware of Mr. Jeffery's previous injury; that Mr. Jeffery was under orders in 1996 from his treating doctor at that time to refrain from lifting heavy objects; but it is also undisputed that he had a spinal cord stimulator implanted in early 2000 following which in May 2000 his treating physician in discussing

his work told him only to be "careful" with heavy lifting and by September 2000 the doctor noted he was working as a mechanic, doing well and on no medications. Mr. Jeffery worked for Sunshine for approximately two years without an incident. The evidence shows that Mr. Jeffery's injury occurred suddenly as Mr. Jeffery, with the help of another employee, was lifting a 100 to 150 pound brake drum (R. p. 578, l. 17 - p. 579, l. 5). Sunshine argues that because of Mr. Jeffery's previous injury, and the lifting restrictions imposed on Mr. Jeffery by his doctors in 1996, the injury cannot be said to have been unexpected, and therefore was not an accident within the meaning of the Act.

There is case law to support the proposition that if Mr. Jeffery *should have* known that injury would likely occur, the event cannot be characterized as an accident. "'An effect which does not ordinarily follow and *cannot be reasonably anticipated* from the use of those means, an effect which the actor did not intend to produce and * * * cannot be charged with the design of producing, * * * is produced by accidental means.'" *Western Commercial Travelers' Ass'n v. Smith*, 85 F. 401, 405, 29 C.C.A. 223, 56 U.S.App. 393, 40 L.R.A. 653.

However, the cases as a whole establish that as long as Mr. Jeffery did not in fact expect that he would re-injure his back by lifting the break drum, or intend to do so, the injury is

accidental. "[Accident]" is generally construed as meaning an occurrence which is neither expected, designed, nor intentionally caused by the workman... It has been stated that an injury is unexpected, so as to bring it within the category of 'accident'... if the workman did not *intend or expect* that it would result on the particular occasion from what he was doing.'" Colvin v. E. I. Du Pont De Nemours Co., 227 S.C. 465, 468-69, 88 S.E.2d 581, 582 (1955). "Furthermore, an accident is an event not within one's foresight and expectation and may be due to purely accidental causes or may be due to oversight and negligence, carelessness, fatigue, or *miscalculation of the effects of voluntary action.*" Linnen v. Beaufort Cnty. Sheriff's Dep't, 305 S.C. 341, 344, 408 S.E.2d 248, 250 (Ct. App. 1991).

The fact that Mr. Jeffery had previously injured his back does not in and of itself mean that this event was not an accident. "If... there is a subsisting condition of illness or incapacity or physical disability which is caused, increased, or accelerated by some act or event coming by chance or happening fortuitously, then the requisite quality or condition of the injury will exist so as to make it accidental." Sturkie v. Ballenger Corp., 268 S.C. 536, 540, 235 S.E.2d 120, 122 (1977).

Finally, the plain meaning of the word "accident" supports the view that Mr. Jeffery's injury was accidental. Words must

be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (S.C. Ct. App. 2002). Because Mr. Jeffery's injury was a sudden, unexpected event, the Court believes that it is an accident within the meaning of the statute. For these reasons, the decision of the Commission is reversed. Further, based on the Decision of the Court on this issue reversing this matter, the other issues raised on appeal are not addressed.

Therefore it is ordered that the Decision of the SC Workers' Compensation Commission be and hereby is REVERSED.

AND IT IS SO ORDERED.

EW



~~THE HONORABLE~~ EDGAR W. DICKSON
Presiding Judge and Resident Judge
For the First Judicial Circuit

March 3, 2014

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
C/A NO. 2011-CP-38-00690

LEE B. JEFFREY, SR.,)
)
Employee/Claimant,)
)
Appellant,)
)
v.)

ORDER DENYING THE DEFENDANTS'
SCRCP RULE 59(E) MOTION

SUNSHINE RECYCLING,)
)
Employer,)
)
and)
)
CAPITAL CITY INSURANCE,)
)
Carrier,)
)
Defendants/Respondents.)

ATTEST: TRUE COPY
Wingja R. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

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AM

The Defendants timely filed a Rule 59(e) Motion to the Court's Decision in the above-referenced matter which was issued by the Court on March 3, 2014 and was filed on March 7, 2014. After due and proper deliberation of the Motion and the Reply filed by the Employee/Appellant as Respondent to the Motion, it is the Court's decision to deny the Motion.

As was agreed by the parties at the initial hearing on the appeal, this matter was before the Court for a determination as to whether or not the Appellant, the injured worker, had sustained compensable injury by accident under the law as a matter of law.

1/4 *[Signature]*

While the Defendants in their Motion raised some issues which are basically factual in nature, they raise other issues within the Motion for Reconsideration alleging that in the Court's original Decision the Court did not discuss the application of the cases of Havird v. Columbia YMCA, 308 S.C. 397, 418 S.E.2d 329 (SC App. 1992) and Capers v. Flautt, 305 S.C. 254, 407 S.E.2d 660 (SC App. 1991) in the Decision. While there is no question that the focus of the Defendants' argument and the Claimant in reply to their argument at the initial Hearing in this matter was on the unexpectedness aspect of the definition of injury by accident under our law and while this Court made its specific decision and cited the case law upon which it relied in making the decision on that issue as part of its decision on the application of the definition of injury by accident and whether or not the Claimant as a matter of law had sustained injury by accident under that definition, the Court did not specifically cite to those two cases in the decision. Since the Defendants have consistently relied on Havird and Capers in raising this defense and while the underlying legal issue raised by this defense as to the definition of injury by accident, i.e., the unexpectedness element, is the subject of the Court's Order, the Court will address the decisions in Havird and Capers specifically in this Order.


First, both Havird and Capers are cases dealing with basically what is referred to as a repetitive trauma type injury with Mr. Havird's injury being related to continual and repetitive long periods of standing on his job and Mr. Capers being repetitively and continually exposed to water and detergents/soaps causing dermatitis whereas in this case Mr. Jeffrey sustained injury from a specific lifting event. In Havird, the Court of Appeals found that there was no injury by accident because there was no overexertion or, "specific happening". These facts are distinguishable by the facts in this case which resemble a sudden, untoward event. While the Capers decision is more helpful to the Defendants, the Court finds that it too is distinguishable. In the Capers case, Mr. Capers knew to a near certainty that his job as a dishwasher would cause his dermatitis to worsen. Mr. Capers returned to dishwashing and his subsequent problems with dermatitis do not qualify in this Court's opinion as a sudden, unexpected unlooked for event. In its original Decision, this Court quoted from Colvin v. E.I. DuPont De Nemours Co., 227 S.C. 465, 468-69, 88 S.E.2d 581, 582 (1955) one of the seminal cases on the definition of injury by accident and quoted:

"[accident]' is generally construed as meaning an occurrence which is neither expected, designed nor intentionally caused by the workman . . . it has been stated that an injury is unexpected, so as to bringing it within the category of

'accident' . . . if the workman did not intend
or expect that it would result on the particular
occasion from what he was doing." (Emp. add.)

In this case, the last doctor to see Mr. Jeffrey who discussed any work restrictions with him was Dr. Jolles who only told him to be somewhat careful with heavy lifting. On the date of the accident, Mr. Jeffrey had worked for about two years with that understanding and after getting a fellow worker to help him pull and lift a heavy truck brake drum the accident suddenly happened. Therefore, while the Court appreciates Defendants' argument and agrees that Mr. Jeffrey's injury was arguably foreseeable, the test for injury by accident requires more than foreseeability. Because the Court believes that Mr. Jeffrey did not expect to be injured, and because of the sudden, unexpected nature of the injury, his injury was an injury by accident under the SC Law. Wherefore, based on all of the above and after due and proper consideration of the Motion and the Reply, the Motion for Reconsideration is DENIED.

AND IT IS SO ORDERED.


~~Ed~~ HONORABLE EDGAR W. DICKSON
Judge, First Judicial Circuit

August 13, 2014

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