

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NOS.: 1122474 & 1219561

JOSE JUAN JIMENEZ, EMPLOYEE..... CLAIMANT/APPELLANT

VS.

KOHLER COMPANY, SELF-INSURED EMPLOYER..... DEFENDANT/RESPONDENT.

Appellate Panel Review Hearing
held in Columbia, South Carolina,
on March 16, 2015, per notices
timely and properly served upon
all parties of interest.

Appellate Panel Decision and Order

filed, May 22, 2015

RECEIVED

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SC Court of Appeals

APPEARANCES:

CLAIMANT/APPELLANT represented by Alton L. Martin, Jr., Esquire, of Greenville, South Carolina; and

DEFENDANT/RESPONDENT represented by Grady L. Beard, Esquire, of Columbia, South Carolina.

STATEMENT OF THE CASE

This is an appeal by Jose Juan Jimenez ("Appellant" or "Claimant") from the Decision and Order of Commissioner T. Scott Beck filed on October 24, 2014.

These claims were before the South Carolina Workers' Compensation Commission pursuant to Forms 50 filed by the claimant on February 1, 2013. It is the position of the claimant that he suffered compensable accidents on July 14, 2011, and on March 13, 2012, resulting in injuries to his back and left leg. The claimant is requesting a finding of compensability as to both claims, authorized causally-related medical treatment for his alleged injuries, reimbursement for out of pocket medical expenses for the causally-related medical treatment obtained to date, and temporary total disability benefits from January 30, 2013, and continuing until such time as the claimant reaches maximum medical improvement.

To the contrary, the defendant has denied each of these claims in their entirety, but specifically based upon the claimant's failure to meet his burden of proving the alleged injuries arose out of and in the course of his employment with the defendant pursuant to Section 42-1-160, or that the claimant's alleged problems were in fact causally related to the alleged injuries; and based upon the claimant's failure to timely report the claims as work-related pursuant to Section 42-15-20, or claimant's failure to ever even pursue medical treatment after either alleged incident. The defendant also specifically requested a determination as to the credibility or lack thereof of the claimant. Finally, the defendant contends that if either claim is compensable, the claimant sustained a subsequent intervening accident which is the true cause of his current alleged problems.

The Hearing in this matter was held before Commissioner T. Scott Beck ("Hearing Commissioner") in Columbia, South Carolina, on May 23, 2014, and June 4, 2014, and in Greenville, South Carolina, on June 3, 2014. By way of Decision and Order filed on October 24, 2014, the Hearing Commissioner made the following findings of fact:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Jose Juan Jimenez as employee and Kohler Company as self-insured employer.

2. The defendant's objection to page seven of claimant's APAs is hereby overruled.
3. I find the Claimant seeks a determination of compensability with regard to his back and left leg injuries alleged on July 14, 2011, and March 13, 2012, as well as causally related medical care, payment of out of pocket expenses and temporary total disability benefits from January 30, 2013, to the present and continuing.
4. The parties stipulate that the Claimant is responsible for payment of witness fees for four defense employees.
5. I find the testimony of Jesus Lugo and Yuri Valderamma, witnesses for the Claimant, is not dispositive on the issue of establishing a pattern of denying claims. Further, I find their testimony is neither relevant nor credible. This Finding is based upon the Hearing testimony of Mr. Lugo and Mr. Valderamma, and my observation of each at the Hearing.
6. I find the testimony of Nurse Pat Zimmerman to be very credible.
7. I find the testimony of Claimant is not credible. Specifically, I found him to be evasive, elusive and generally unreliable. I specifically noted claimant's inability to look at anyone during his testimony and his repeated attempts to banter with defense counsel on questions that required little contemplation.

8. I further find that claimant possesses better than average academic skills. This Finding is based upon the greater weight of the evidence in the record, including but not limited to the Hearing testimony of the Claimant, and the testimony of Dr. Jeter and Dr. Rodriguez.
9. I find that claimant reported "incidents" following each alleged date of injury, however, I find these do not rise to the level of defining an injury to the employer. This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for months following each alleged date of injury. This Finding is based upon the greater weight of the evidence in the record.
10. The deposition of Dr. Savage-Jeter is not dispositive on the issue of compensability.
11. Neither is the deposition of Dr. Rodriguez compelling to me on the issue of compensability. His opinion tends to vacillate and when specifically addressing the issue of compensability admits his opinion is based on the claimant's subjective statements. I also note Dr. Rodriguez's opinion that he believed the claimant had been coached on the visit in which the claimant defined a specific event causing the injury that he was previously unable to identify. See Deposition of Dr. Rodriguez, pp. 10, 15-16, 27, 34.
12. I find the defendant's argument of an intervening accident is not dispositive.
13. I find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back or left leg on either alleged dates of injury. This Finding is based upon the greater weight of the evidence in the record.
14. I find the Claimant's request for benefits is denied.
15. The undersigned's prior representation by Mr. Beard in a prior employment matter in 1996 was disclosed prior to commencement of this proceeding and the issue of recusal was waived by counsel for the claimant.

In addition, the Hearing Commissioner made the following conclusions of law:

1. Pursuant to § 42-1-130, claimant was a covered employee at the time in question.
2. Pursuant to § 42-1-140, self-insured employer was a covered employer under the Act.
3. Pursuant to § 42-1-160, claimant did not sustain a compensable injury by accident to low back and/or left leg on July 14, 2011, or March 13, 2012. The claimant is therefore not entitled to any benefits under the Act.

Within the statutory period, the claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Full Commission Appellate Panel ("Appellate Panel") on March 16, 2015. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Appellate Panel and has since been under study and consideration. Specifically, the claimant respectfully requests the Appellate Panel to reverse the Decision and Order of the Hearing Commissioner in its entirety based upon the following grounds:

1. Did the Commissioner err in finding the injuries at work reported by claimant to his supervisor and the company nurse immediately following the dates of accident did not satisfy the requirement of reporting an injury to the employer?
2. Did the Commissioner err in finding the Claimant failed to carry his burden of proof, in light of the nurse's notes related to claimant and Jesus Lugo, the testimony, and the medical evidence?
3. Did the Commissioner err in finding the testimony of Nurse Zimmerman "very credible" and Jesus Lugo not credible to establish a pattern, when the nurse's notes directly conflicted with her testimony and confirmed Mr. Lugo's testimony?

After careful review in the instant case of all grounds raised, the evidence in the record, and oral arguments from both counsel, the Commission finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be Affirmed with an Amendment, specifically the clarification of Finding of Fact Number 9.

FINDINGS OF FACT

After careful review of the evidence presented by the parties including the Hearing and deposition testimony of the claimant, the Hearing testimony of Mike Tolleson, Sam Bamwell, Joe Brown, Sid DeVaul, Jesus Lugo, and Yuri Valderama, the deposition testimony of Nurse Pat Zimmerman, Erica Savage-Jeter, M.D., and Marco Rodriguez, M.D., and the medical records and exhibits submitted through the APA, WE FIND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Jose Juan Jimenez as employee and Kohler Company as self-insured employer.
2. The defendant's objection to page seven of claimant's APAs is hereby overruled.
3. We find the Claimant seeks a determination of compensability with regard to his back and left leg injuries alleged on July 14, 2011, and March 13, 2012, as well as causally related medical care, payment of out of pocket expenses and temporary total disability benefits from January 30, 2013, to the present and continuing.
4. The parties stipulate that the Claimant is responsible for payment of witness fees for four defense employees.
5. We find the testimony of Jesus Lugo and Yuri Valderamma, witnesses for the Claimant, is not dispositive on the issue of establishing a pattern of denying claims. Further, we find their testimony is neither relevant nor credible, as was also found by the Hearing Commissioner. This Finding is based upon the Hearing testimony of Mr. Lugo and Mr. Valderamma.
6. We find the testimony of Nurse Pat Zimmerman to be very credible, as was also found by the Hearing Commissioner.
7. We find the testimony of Claimant is not credible, as was also found by the Hearing Commissioner. Specifically, we find him to be evasive, elusive and generally unreliable. We specifically note the claimant's inability to look at anyone during his testimony and his repeated attempts to banter with defense counsel on

- questions that required little contemplation as pointed out by the Hearing Commissioner.
8. We further find that claimant possesses better than average academic skills. This Finding is based upon the greater weight of the evidence in the record, including but not limited to the Hearing testimony of the Claimant, and the testimony of Dr. Jeter and Dr. Rodriguez.
 9. We find that claimant reported "incidents" following each alleged date of injury, however, we specifically find the claimant has failed to carry his burden of proving his current problems are causally-related to these reported "incidents". This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for numerous months following each alleged date of injury. This Finding is based upon the greater weight of the evidence in the record.
 10. The deposition of Dr. Savage-Jeter is not dispositive on the issue of compensability.
 11. Neither is the deposition of Dr. Rodriguez compelling to us on the issue of compensability. His opinion tends to vacillate and when specifically addressing the issue of compensability admits his opinion is based on the claimant's subjective statements. We also note Dr. Rodriguez's opinion that he believed the claimant had been coached on the visit in which the claimant defined a specific event causing the injury that he was previously unable to identify. See Deposition of Dr. Rodriguez, pp. 10, 15-16, 27, 34.
 12. We find the defendant's argument of an intervening accident is not dispositive.
 13. We find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back or left leg on either alleged dates of injury. This Finding is based upon the greater weight of the evidence in the record and, moreover, Finding of Fact #9 above.
 14. We find the Claimant's request for benefits is denied for all reasons referenced above.
 15. The Hearing Commissioner's prior representation by Mr. Beard in a prior employment matter in 1996 was disclosed prior to commencement of this proceeding and the issue of recusal was voluntarily waived by counsel for the claimant.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of this Appellate Panel that:

1. Pursuant to § 42-1-130, claimant was a covered employee at the time in question.

2. Pursuant to § 42-1-140, self-insured employer was a covered employer under the Act.
3. Pursuant to § 42-1-160, claimant did not sustain a compensable injury by accident to his low back and/or left leg on July 14, 2011, or March 13, 2012, for the reasons specifically stated in Finding of Fact #9, and based upon the greater weight of evidence in the record. The claimant is therefore not entitled to any benefits under the Act.

ORDER

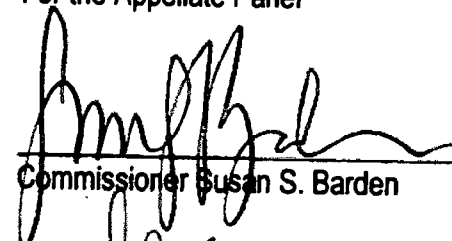
IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above-captioned matters on October 24, 2014, is hereby UNANIMOUSLY AFFIRMED WITH AN AMENDMENT, specifically the clarification of Finding of Fact Number 9.

AND IT IS SO ORDERED.

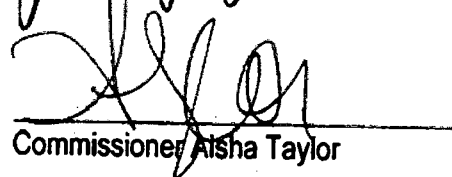
SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



Commissioner Gene McCaskill
For the Appellate Panel



Commissioner Susan S. Barden



Commissioner Aisha Taylor

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 May 22, 2015