

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1315636

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AUG 05 2015

SC Court of Appeals

KATHEY L. STATON,

Employee,

Claimant,

vs.

MOHAWK INDUSTRIES, INC.,

Employer,

AND

LIBERTY MUTUAL

Carrier,

**DECISION AND ORDER OF
APPELLATE PANEL**

Defendants.

Appellate Review held in Columbia, South Carolina on May 18, 2015, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed July 7, 2015

APPEARANCES:

Claimant/Appellant represented by
Stephen J. Wukela, Esquire of Florence, South Carolina.

Defendants /Respondents represented by
J. Brandon Hylton, Esquire of Florence, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Gene McCaskill on October 2, 2014 in Hartsville, South Carolina. On January 26, 2015, he issued the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT OF THE SINGLE COMMISSIONER

Based upon the evidence submitted at the hearing, it was found as fact that:

1. The Claimant alleges that she sustained a repetitive trauma injury to both wrists arising out of and within the course and scope of her employment.
2. She alleges on her Form 58 a date of injury of 11/17/13.
3. The Defendants deny her claim based on the lack of timely notice to her employer. They allege 06/28/13 as the date of injury in their pre-hearing brief.
4. The sole issue before the Commission at this hearing is a determination of compensability.

5. The Claimant initially filed this case *pro se* on 11/13/13. No Form 51 was filed. That Form 50 was withdrawn.
6. The Claimant then hired Mr. Wukela to represent her and he filed another Form 50 on her behalf. The Defendants responded by filing a Form 51 in response.
7. The Claimant's position is that since the Defendants did not file a Form 51 in response to her initial filing on 11/13/13, defensive notice was forfeited per the regulation.
8. The Claimant's position as to notice would be correct had she not withdrawn the Form 50 filed on 11/13/13. She, however, did withdraw that Form 50 and, as such, afforded the Defendants the opportunity to file a timely response – which they did – when she filed a new Form 50 on 07/03/14.
9. Both sides argue King v. International Knife and Saw as applicable case law. They are correct.
10. The Claimant's condition becomes compensable when she knew or should have known that she qualified for benefits for medical care and treatment, as well as disability due to her condition.
11. The Court of Appeals writes in King, "King's condition was not compensable until it either required medical care or interfered with his ability to perform his job, whichever occurred first.

12. The Claimant testified at the hearing that the pain started in 2012, and that is when she first went to see a doctor.
13. She also testified that she thought at that time that her pain was work-related.
14. The medical note from Dr. Kimberley Linger dated 09/19/12, states in the Assessment/Plan section – “CARPAL TUNNEL SYNDROME – New problem...”
15. The Claimant does not provide notice to her employer until 06/28/13.
16. Given the timeline, the Claimant has failed to provide notice to her employer within the statutorily designated time period.
17. That being said, the Claimant has disqualified herself from any benefits that would have been due her had notice been timely.
18. When the evidence is viewed as a whole, the Claimant has failed to meet her burden as to compensability and the claim is dismissed.

CONCLUSIONS OF LAW OF THE SINGLE COMMISSIONER

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1. Section 42-1-160 of the South Carolina Code of Law (1976, as amended) is applicable in defining injury and personal injury.
 2. Section 42-15-60 of the South Carolina Code of Law (1976, as amended) is applicable in defining the period of time within which medical treatment and supplies shall be furnished.
 3. Section 42-15-20 of the South Carolina Code of Law (1976, as amended) is applicable in determining when a claimant must provide notice to the employer regarding a repetitive trauma injury.
 4. Section 42-17-40 of the South Carolina Code of Law (1976, as amended) is applicable in governing the conduct of hearings and renderings of awards.
 5. *King vs. International Knife and Saw*, 395 S.C. 437; 718 S.E. 2d 227, (SC Ct. App. 2011) is applicable in determining when a claimant must report an injury to the employer after suffering a repetitive trauma injury and states that notice must be made within 90 days of when claimant knew or should have known that the repetitive trauma injury was compensable. Compensability is determined when the condition requires medical treatment or interferes with an employee's ability to perform his or her job, whichever occurs first.

ORDER OF THE SINGLE COMMISSIONER

Based on the above Findings of Fact and Conclusions of Law, the Single Commissioner ordered as follows:

1. **IT IS ORDERED** that the Claimant sustained an injury to her bilateral wrists in the form of carpal tunnel syndrome.
 2. **IT IS FURTHER ORDERED** that the Claimant failed to provide timely notice of her injury, as she began having pain in her wrists in 2012 and sought and received medical treatment in November of 2012 and was diagnosed with carpal tunnel syndrome at that time. Further, the Claimant stated that in 2012 she knew that the pain in her wrists was coming from her work at Mohawk. The Claimant did not provide notice of a work-related injury to her employer until June 28, 2013.
 3. **THEREFORE, IT IS ORDERED** that because the Claimant failed to provide timely notice, she has disqualified herself from any benefits that would have been due to her had notice been timely.
 4. **THEREFORE, IT IS FURTHER ORDERED** that when the evidence is viewed as a whole, the Claimant failed to meet her burden as to compensability and the claim is dismissed.
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During the statutory period, counsel for the Claimant filed an Application for Review of the case, setting forth Claimant's grounds for review, a copy of which was furnished to all parties prior to oral argument, presented before the Appellate Panel on October 2, 2014. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration. By appeal, Claimant respectfully submits the following:

Whether the Single Commissioner erred in finding as a matter of fact and conclusion of law that the case was not compensable for lack of adequate notice of the accident?

Whether the Single Commissioner erred as a matter of fact and conclusion of law in finding that the Defendants had properly raised the defense of notice?

Whether, even assuming that Defendants properly raised the issue of notice, the Single Commissioner erred as a matter of fact and conclusion of law in finding that the Claimant failed to give adequate notice by virtue of her report to the Employer on or about June 28, 2013.

Whether the Single Commissioner erred as a matter of fact and conclusion of law in finding that the Claimant discovered, or could have discovered by exercise of reasonable diligence, that her accident was compensable upon her treatment with her family doctor on or about November 2, 2012, and that Claimant was obligated to give notice within ninety (90) days of that date to the Employer? In particular, Claimant contends that she did not receive a diagnosis of carpal tunnel syndrome from her doctor on that date and that, even if she had, no physician opined that her condition was work-related, and thus compensable, until after the Form 50 was filed.

Whether the Single Commissioner erred in failing to find as a matter of fact and conclusion of law that the Claimant adequately gave notice within ninety (90) days of the date of last injurious exposure, i.e. November 17, 2013?

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (2007), review the Award, weigh the evidence as presented at the initial hearing, and that good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law ~~consistent with or inconsistent with those of the Hearing Commissioner.~~

After carefully reviewing the instant case, the Panel, by majority vote, has determined all of the Single Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, we make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Based on the evidence submitted at the hearing, we find as fact that:

1. The Claimant alleges that she sustained a repetitive trauma injury to both wrists arising out of and within the course and scope of her employment.
2. She alleges on her Form 58 a date of injury of 11/17/13.
3. The Defendants deny her claim based on the lack of timely notice to her employer. They allege 06/28/13 as the date of injury in their pre-hearing brief.
4. The sole issue before the Commission is a determination of compensability.
5. The Claimant initially filed this case *pro se* on 11/13/13. No Form 51 was filed. That Form 50 was withdrawn.

6. The Claimant then hired Mr. Wukela to represent her and he filed another Form 50 on her behalf. The Defendants responded by filing a Form 51 in response.
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10. The Claimant's condition becomes compensable when she knew or should have known that she qualified for benefits for medical care and treatment, as well as disability due to her condition.
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12. The Claimant testified at the hearing that the pain started in 2012, and that is when she first went to see a doctor.
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14. The medical note from Dr. Kimberley Linger dated 09/19/12, states in the Assessment/Plan section – "CARPAL TUNNEL SYNDROME – New problem..."
15. The Claimant does not provide notice to her employer until 06/28/13.
16. Given the timeline, the Claimant has failed to provide notice to her employer within the statutorily designated time period.
17. That being said, the Claimant has disqualified herself from any benefits that would have been due her had notice been timely.
18. When the evidence is viewed as a whole, the Claimant has failed to meet her burden as to compensability and the claim is dismissed.

CONCLUSIONS OF LAW

1. Section 42-1-160 of the South Carolina Code of Law (1976, as amended) is applicable in defining injury and personal injury.
2. Section 42-15-60 of the South Carolina Code of Law (1976, as amended) is applicable in defining the period of time within which medical treatment and supplies shall be furnished.
3. Section 42-15-20 of the South Carolina Code of Law (1976, as amended) is applicable in determining when a claimant must provide notice to the employer regarding a repetitive trauma injury.
4. Section 42-17-40 of the South Carolina Code of Law (1976, as amended) is applicable in governing the conduct of hearings and renderings of awards.
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ORDER

Based on the above Findings of Fact and Conclusions of Law, the undersigned Commissioners order as follows:

1. **IT IS ORDERED** that the Claimant sustained an injury to her bilateral wrists in the form of carpal tunnel syndrome.
2. **IT IS FURTHER ORDERED** that the Claimant failed to provide timely notice of her injury, as she began having pain in her wrists in 2012 and sought and received medical treatment in November of 2012 and was diagnosed with carpal tunnel syndrome at that time. Further, the Claimant stated that in 2012 she knew that the pain in her wrists was coming from her work at Mohawk. The Claimant did not provide notice of a work-related injury to her employer until June 28, 2013.
3. **THEREFORE, IT IS ORDERED** that because the Claimant failed to provide timely notice, she has disqualified herself from any benefits that would have been due to her had notice been timely.

4. **THEREFORE, IT IS FURTHER ORDERED** that when the evidence is viewed as a whole, the Claimant failed to meet her burden as to compensability and the claim is dismissed.

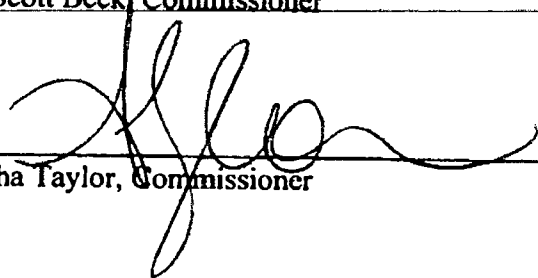
IT IS SO ORDERED.

Full affirmation 

S. C. WORKERS' COMPENSATION COMMISSION


Avery B. Wilkerson, Jr., Commissioner


T. Scott Beck, Commissioner


Aisha Taylor, Commissioner

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 July 7, 2015