

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1023652

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SC Court of Appeals

Nathaniel Spann,

APPELLANT
CLAIMANT,

vs.

Professional Systems,

EMPLOYER,

AND

Travelers Indemnity Company of America,

CARRIER,
DEFENDANTS/RESPONDENTS

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

Appellate Panel Decision and Order filed
July 22, 2015

APPEARANCES:

Appellant Nathaniel Spann, Claimant of Lynchburg, South
Carolina.

Defendants/Respondents represented by Ramie S. Shalabi,
Esquire of Willson Jones Carter & Baxley, P.A. in
Columbia, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Aisha G. Taylor, on December 10, 2014, in Columbia, South Carolina. On February 5, 2015, she issued an Order from which the Claimant appealed.

The Hearing Commissioner's Decision and Order set forth the following Findings of Fact:

1. Claimant first appeared before the undersigned Commissioner on November 4, 2014, pursuant to his Form 50 Request for Hearing. At that time, he was informed of his right to have an attorney and requested the Commission postpone his case in order for him to obtain counsel. Pursuant to Claimant's request, the Commission issued an Order postponing the hearing for thirty (30) days to allow Claimant to seek counsel.

2. This matter was reset for a hearing on December 10, 2014, pursuant to Claimant's Form 50 Request for Hearing. Claimant was present at the hearing and informed the Commission that he was unable to retain counsel to represent him. Claimant was again advised of his rights and elected to proceed *pro se*.

3. Claimant's claim for benefits pursuant to the Workers' Compensation Act is barred by the Statute of Limitations. Claimant filed his Form 50 July 14, 2014. Medical evidence reveals Claimant knew of his Hepatitis C as early as August 12, 2010. (APA #2, p. 19.)

4. Notwithstanding the jurisdictional finding in Finding of Fact #3, Claimant failed to meet his burden of proving a causal connection between his Hepatitis C diagnosis and his employment with Professional Systems, LLC.

5. The medical evidence in the record does not determine a date or time of infection and Claimant cannot recall an exact date of exposure. Additionally, the medical evidence reveals Claimant was first diagnosed with Hepatitis C on August 12, 2010; however, it could not determine how or when Claimant contracted the disease. Furthermore, Claimant's testimony

regarding the event at Sears in which he was exposed to blood states that this event occurred around September 1, 2010, – after he had already been diagnosed with the disease. Claimant also testified his exposure could have come from other sources but that he ruled these out in his own personal investigation.

6. I find Claimant was an employee of Professional Systems, LLC based upon the uncontradicted testimony of Claimant.

7. I find Claimant has an average weekly wage of \$265, which yields a compensation rate of \$176.68. This finding is based upon the uncontradicted testimony of Claimant.

8. All claims for benefits are denied.

The Hearing Commissioner's Decision and Order also set forth the following Conclusions of Law:

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Pursuant to S.C. Code §§ 42-1-130 and 42-1-140, Claimant was a covered employee at the time in question and Defendant/Employer was a covered employer under the Act.

2. Pursuant to S.C. Code § 42-1-40, Claimant's applicable average weekly wage is \$265.00 with the corresponding compensation rate of \$176.68.

3. Pursuant to S.C. Code §§ 42-1-160 and 42-11-10, Claimant failed to meet his burden of proving a compensable injury or illness arising out of or in the course and scope of his employment.

4. Pursuant to S.C. Code § 42-15-40, Claimant's claim to benefits under the Act is barred.

Within the statutory period, the Claimant, appearing *pro se*, filed an Application for Review in the case setting forth the following assignments of error:

1. The Single Commissioner erred in finding that the Claimant was barred by the statute of limitations.
2. The Single Commissioner erred in finding that the Claimant failed to meet his burden in proving he sustained an injury by accident arising out of and in the course and scope of his employment.
3. The Single Commissioner erred in finding that the Claimant was not entitled to any benefits under the Act.

Copies of the above assignments of error were furnished to all interested parties prior to oral argument presented before the Appellate Panel on June 16, 2015.

Pursuant to S.C. Code Ann. § 42-17-50 (1985), the Appellate Panel reviewed the Order and weighed the evidence in the record as presented at the initial Hearing. The Panel also considered all issues raised in the brief of the Appellant and Respondents. The Panel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. Claimant first appeared before the Single Hearing Commissioner on November 4, 2014, pursuant to his Form 50 Request for Hearing. At that time, he was informed of his right to have an attorney and requested the Commission postpone his case in order for him to obtain counsel. Pursuant to Claimant's request, the Commission issued an Order postponing the hearing for thirty (30) days to allow Claimant to seek counsel.
2. This matter was reset for a hearing on December 10, 2014, pursuant to Claimant's

Form 50 Request for Hearing. Claimant was present at the hearing and informed the Single Hearing Commissioner that he was unable to retain counsel to represent him. Claimant was again advised of his rights and elected to proceed *pro se*.

3. Claimant's claim for benefits pursuant to the Workers' Compensation Act is barred by the Statute of Limitations. Claimant filed his Form 50 July 14, 2014. Medical evidence reveals Claimant knew of his Hepatitis C as early as August 12, 2010. (APA #2, p. 19.)

4. Notwithstanding the jurisdictional finding in Finding of Fact #3, Claimant failed to meet his burden of proving a causal connection between his Hepatitis C diagnosis and his employment with Professional Systems, LLC.

5. The medical evidence in the record does not determine a date or time of infection and Claimant cannot recall an exact date of exposure. Additionally, the medical evidence reveals Claimant was first diagnosed with Hepatitis C on August 12, 2010; however, it could not determine how or when Claimant contracted the disease. Furthermore, Claimant's testimony regarding the event at Sears in which he was exposed to blood states that this event occurred around September 1, 2010, – after he had already been diagnosed with the disease. Claimant also testified his exposure could have come from other sources but that he ruled these out in his own personal investigation.

6. The Claimant was an employee of Professional Systems, LLC based upon the uncontradicted testimony of Claimant.

7. The Claimant has an average weekly wage of \$265, which yields a compensation rate of \$176.68. This finding is based upon the uncontradicted testimony of Claimant.

8. All claims for benefits are denied.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws § 42-17-50 (1976), WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Pursuant to S.C. Code §§ 42-1-130 and 42-1-140, Claimant was a covered employee at the time in question and Defendant/Employer was a covered employer under the Act.
2. Pursuant to S.C. Code § 42-1-40, Claimant's applicable average weekly wage is \$265.00 with the corresponding compensation rate of \$176.68.
3. Pursuant to S.C. Code §§ 42-1-160 and 42-11-10, Claimant failed to meet his burden of proving a compensable injury or illness arising out of or in the course and scope of his employment.
4. Pursuant to S.C. Code § 42-15-40, Claimant's claim to benefits under the Act is barred.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner from which this appeal has been taken is hereby **AFFIRMED IN FULL**.

IT IS AFFIRMED that Claimant's claim for benefits under the Act was barred by the Statute of Limitations.

IT IS AFFIRMED that Claimant did not meet his burden of proving a compensable illness or injury.

AND IT IS SO ORDERED.

**AFFIRMED WITH
AMENDMENT
CONCUR:**

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**


Gene McCaskill, Commissioner


Michael Campbell, Commissioner


Melody James, 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 22, 2015