

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

Alison Renee Lee, Circuit Court Judge

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Appellate Case No. 2013-000887

AUG 12 2015

SC Court of Appeals

Gertrude Shiver, Claimant,Appellant,

v.

Palmetto Health Richland, Employer, Key Risk Management
Services, Inc., TPA, Palmetto Hospital Trust Services, Carrier,
Trident Regional Medical Center, Employer, and Zurich American
Insurance Company, Carrier, Respondents.

BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE FULL COMMISSION OR THE CIRCUIT COURT ERR IN DENYING APPELLANT'S MOTION FOR LEAVE TO SUBMIT ADDITIONAL RECORD EVIDENCE?
- II. DID THE FULL COMMISSION ERR IN DECLINING TO HEAR ORAL ARGUMENT OF APPELLANT'S CLAIMS?
- III. WAS EACH AND EVERY DECISION OF THE FULL COMMISSION TO DENY COMPENSATION BENEFITS SUPPORTED BY SUBSTANTIAL EVIDENCE?

STANDARD OF REVIEW

South Carolina Code Ann. § 1-23-380 establishes the “substantial evidence” rule as the standard of review for decisions of the Workers’ Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). Pursuant to that rule, the circuit court reviewing an award or denial of benefits may reverse or modify the agency’s decision only if the findings, rulings, and conclusions of the administrative agency are “clearly erroneous in view of the reliable and substantive evidence of the whole record.” *Id.*, 276 S.C. at 135, 276 S.E.2d at 306. Substantial evidence is defined as:

Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It must be enough to justify, if the trial went to a jury, refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. This is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.

Id., 276 S.C. at 135-136, 276 S.E.2d at 307.

Appellate courts are not at liberty to substitute their view of the evidence for that rendered by the Commission. Rather, “[t]he Circuit Court’s role is appellate only, and is limited to deciding whether the Commission’s decision is not supported by substantial evidence or is controlled by some error of law.” *Rogers v. Kunja Knitting Mills Co.*, 312 S.C. 377, 440 S.E.2d 401 (Ct. App. 1994). When reviewing an appeal from the Workers’ Compensation Commission, the appellate court may not weigh the evidence or substitute its judgment for that of the Full Commission as to the weight of the evidence and questions of fact. *Farrell v. Jerry’s, Inc.*, 370 S.C. 22, 26, 633 S.E.2d 893, 894-895 (2006).

Moreover, “the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm’n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). In workers’ compensation cases, the Appellate Panel is the ultimate finder of fact. *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). When the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive. *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 290, 599 S.E.2d 604, 611 (Ct. App. 2004). The final determination of witness credibility and the weight to be accorded evidence is reserved for the Appellate Panel. *Bass v. Kenco Group*, 366 S.C. 450, 458, 622 S.E.2d 577, 581 (Ct. App. 2005).

STATEMENT OF THE CASE

This appeal arises from the consolidation and disposition, affirmed by the circuit court, of seven workers' compensation claims by Appellant *pro se* Gertrude Shiver ("Shiver") stemming from a number of work-related injuries alleged to have occurred between 1995 and 2006. (R. p. 65) While the claims involve multiple employers and carriers, all matters pending before the Commission were ruled upon in the October 23, 2007 Decision and Order of the single commissioner. (R. pp. 9-37) In response to the October 23, 2007 Decision and Order dispensing with her claims, Shiver delivered her November 5, 2007 correspondence addressing the merits and seeking leave to submit additional evidence. (R. pp. 1162-1190, 1397) The single commissioner treated Shiver's November 5, 2007 correspondence both as a motion for leave to submit additional evidence to the Commission and as a Form 30, Request for Commission Review of the October 23, 2007 Decision and Order.

In its December 6, 2007 Decision and Order, the Full Commission denied Shiver's motion to submit additional evidence but did not address the underlying merits of her claims. (R. pp. 38-42) Thereafter, Shiver filed her notice of appeal to the circuit court, which was dismissed as interlocutory and remanded for Full Commission consideration of the merits via order dated July 21, 2010. (R. pp. 58-59) Shiver's successive motion to include additional evidence was denied by the Full Commission, which thereafter issued its May 3, 2011 Order affirming the single commissioner's Decision and Order in its entirety¹. (R. pp. 43-57) On May 28, 2011, Shiver noticed her

¹ The Full Commission considered Shiver's appeal without oral argument on February 24, 2011. As such, there is no transcript of the proceedings before the Full Commission.

intent to appeal via letter to the Commission, followed by the filing of her second notice of appeal in the circuit court on or after June 1, 2011.

Following oral argument on November 1, 2012, the circuit court entered its March 26, 2013 Order in which it concluded the findings of fact and conclusions of law reached by the Commission were supported by substantial evidence and, accordingly, affirmed that order in its entirety. (R. pp. 64-73) This appeal followed.

STATEMENT OF THE FACTS

Concerning the January 23, 1995 claim (WCC Claim No. 9503744), Shiver alleged injuries to her right shoulder, right foot, right arm, chest, back and feet. She sought additional medical treatment and temporary total disability as a result of this injury. Respondent Trident Regional Medical Center (hereinafter referred to as "Trident") alleged that Shiver entered into a consent order limiting body parts injured in the January 23, 1995 claim to the right shoulder and right foot. (R. pp. 60-62) Trident further argued that Shiver did not present evidence to determine she was entitled to any benefits currently for the right shoulder and right foot. (R. p. 1037, lines 1-5) Shiver further argued at the hearing that she was working two jobs at the time of the January 23, 1995 claim and the wages for the second job should have been taken into account to determine her compensation rate. (R. p. 1055, line 11 – p. 1056, line 16) The single commissioner determined that the Consent Order was binding and the claim was limited to the right foot and right shoulder. (R. p. 29, Finding of Fact nos. 12-14) The single commissioner further found that Shiver had not presented any evidence of a second job so her compensation rate previously determined was correct. (R. p. 29, Finding of Fact no. 15) Finally, the single commissioner found Shiver failed to prove she was entitled to any benefits pursuant to the South Carolina Workers' Compensation Act. (R. p. 30, Finding of Fact nos. 18-20) The Full Commission and circuit court affirmed the findings of the single commissioner. (R. pp. 43-57, 64-73)

Concerning the November 15, 2001 claim (WCC Claim No. 0126962), Shiver alleged injuries to her left Achilles tendon, heel, ankle and foot. Respondent Palmetto Richland Hospital (hereinafter referred to as "Palmetto Health") admitted a minor injury

but alleged it had resolved and that Shiver did not present evidence to determine that she was entitled to any benefits currently for the left Achilles tendon, heel, ankle and foot. (R. p. 1037, lines 6-21) The single commissioner ruled the medical evidence did not support an award for permanent partial disability in this claim and Shiver was not entitled to any benefits as a result of this date of injury. (R. p. 30, Finding of Fact nos. 22-24) The Full Commission and circuit court affirmed these findings. (R. pp. 43-57, 64-73)

Concerning the March 23, 2002 claim (WCC Claim No. 0217755), Shiver alleged injuries to her low back and right side. Palmetto Health admitted a minor injury but alleged it had resolved and that Shiver did not present evidence to determine that she was entitled to any benefits currently for the low back and right side. (R. p. 1038, lines 3-12) The single commissioner ruled the medical evidence did not support an award for permanent partial disability and Shiver was not entitled to any benefits as a result of this date of injury. (R. p. 31, Finding of Fact nos. 27-28) The Full Commission and circuit court affirmed these findings. (R. pp. 43-57, 64-73)

Pursuant to a Motion for Sanctions for non-compliance with payment of statutory benefits filed by the Appellant with the Workers Compensation Commission on April 2, 2014, Commissioner Roche ruled by way of Motion Order on June 20, 2014, that no penalties or sanctions were to be awarded in this claim for failure to pay benefits. Respondent Palmetto Health has paid the temporary total benefits they voluntarily agreed to pay at the time of the original 2007 single commissioner hearing, but for the ongoing appeals, and provided proof of payment for bills related to authorized medical treatment in this claim. Commissioner Roche further ruled that all other issues in this claim remain on appeal to the South Carolina Court of Appeals and the Commission lacks subject

matter jurisdiction to address any of those issues. (R. pp. 74-77, 1191-1192, 1202-1206)

Concerning the October 24, 2002 claim (WCC Claim No. 0227098), Shiver alleged injuries to the left side of her neck and shoulder. Palmetto Health admitted a minor injury but alleged the injury had resolved and Shiver did not present evidence to determine that she was entitled to any benefits currently for the left side of her neck and shoulder. (R. p. 1038, lines 23-25) The single commissioner ruled the medical evidence did not support an award for permanent partial disability in this claim and Shiver was not entitled to any benefits as a result of this date of injury. (R. p. 31, Finding of Fact nos. 32-33) The Full Commission and circuit court affirmed these findings. (R. pp. 43-57, 64-73)

Concerning the January 20, 2003 claim (WCC No. 0322274), Shiver alleged injuries to her neck, back, side, left leg, both wrists and feet, vaginal and perineum areas, and all body as a result of slipping on a wet floor on January 20, 2003. Palmetto Health denied the compensability of her injuries and asserted they were not obligated to pay for past medical expenses. The single commissioner ruled the medical evidence did not support an award for permanent partial disability and Shiver was not entitled to any benefits as a result of this date of injury. (R. p. 32, Finding of Fact nos. 35-37) The Full Commission and circuit court affirmed these findings. (R. pp. 43-57, 64-73)

Concerning the October 23, 2003 claim (WCC Claim No. 0321756), Shiver alleged injuries to her back, left side and both knees. Palmetto Health denied Shiver was injured by accident arising out of or in the course of her employment. Palmetto Health additionally argued Shiver refused medical treatment in this claim. (R. p. 1039, lines 13-17) The single commissioner ruled Shiver did not seek permanent partial disability on

her Form 50 and only sought reimbursement for the cost of unauthorized medical treatment. He further found Shiver did not request treatment or follow her Employer's guidelines for obtaining treatment and, therefore, was not entitled to reimbursement for medical treatment. (R. pp. 32-33, Finding of Fact nos. 40-44) The Full Commission and circuit court affirmed these findings. (R. pp. 43-57, 64-73)

Concerning the July 16, 2006 claim (WCC Claim No. 0616756), Shiver alleged injuries to her right wrist. Palmetto Health denied Shiver was injured by accident arising out of or in the course of her employment. (R. p. 1040, lines 19-21) The single commissioner ruled Shiver did not submit evidence supporting her claim of an injury to her right wrist. (R. p. 33, Finding of Fact nos. 47-49) The Full Commission and circuit court affirmed these findings. (R. pp. 43-57, 64-73)

At the hearing in this matter, Shiver asked to submit numerous documents that had not been submitted pursuant to the Administrative Procedures Act. However, Respondents did not object and consented to submission of all documents presented. (R. p. 10)

ARGUMENT

Shiver, proceeding *pro se*, asserted several issues on appeal to the circuit court. Specifically, she asserted the Full Commission erred in its denial of leave to submit additional evidence, in ruling on the merits of her numerous claims without a hearing and oral argument, and in determining the denial of benefits in each of the seven individual claims she raised was supported by substantial evidence. For the reasons set forth below, these orders should be affirmed.

I. NEITHER THE FULL COMMISSION NOR THE CIRCUIT COURT ERRED IN DENYING APPELLANT'S MOTION FOR LEAVE TO SUBMIT ADDITIONAL RECORD EVIDENCE.

Shiver's first argument on appeal appears to be an assignment of error to the circuit court in affirming the Full Commission's order denying her motion to submit additional record evidence. Like the proverbial kipper, Shiver's argument on this point is a red herring that should not distract the Court from its analysis of whether substantial evidence supports the rulings below. This is especially the case inasmuch as Respondents ultimately consented to the admission of all evidence Shiver proposed to introduce rather than run the risk of injecting error into the case. Shiver's evidence has been admitted and considered below, and she simply cannot demonstrate any prejudice. The Court should affirm on this issue.

The decision to admit or exclude new evidence is committed to the discretion of the Full Commission subject to the requirements of S.C. Code Ann. Reg. 67-707. This regulation requires the party seeking the admission of new evidence to file a motion and to demonstrate the following:

- (1) The evidence sought to be introduced is not evidence of a cumulative or impeaching character but would likely have

produced a different result had the evidence been procurable at the first hearing; and

- (2) The evidence was not known to the moving party at the time of the first hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.

S.C. Code Ann. Reg. 67-707(C). Further, our appellate courts have determined the new evidence must be “of the same nature and character as that required for granting a new trial. . . .” *Ancrum v. Low Country Steaks*, 317 S.C. 188, 193, 452 S.E.2d 609, 612 (Ct. App. 1994).

In this instance, the circuit court correctly affirmed the Full Commission’s order denying Shiver’s request to admit “new” evidence for numerous reasons. First, Shiver’s November 5, 2007 letter candidly acknowledged the “new” evidence included “attachments and addendums that are already in my files.” (R. pp. 1162-1190, 1397) Furthermore, Shiver submitted these materials at the hearing before the single commissioner on October 23, 2007, and Respondents consented to Shiver’s untimely introduction of these records. Thus, the records are cumulative, already in evidence, and Shiver cannot meet her burden of demonstrating the Full Commission erred by denying her motion to introduce new evidence pursuant to S.C. Code Ann. Reg. 67-707. For all of these reasons, this Court should affirm.

II. THE FULL COMMISSION DID NOT ERR IN DECLINING TO HEAR ORAL ARGUMENT OF APPELLANT’S CLAIMS.

Shiver also urges this Court to conclude the Full Commission erred in declining to permit oral argument of her claims. (Appellant’s Am. Initial Br., pp. 15-16) As the circuit court correctly noted, however, Shiver effectively waived her right to present oral

argument to the Full Commission. In order to request oral argument, a party must appropriately note the request on her Form 30, Request for Commission Review. *See* S.C. Code Ann. Reg. 67-707(4)(a) (“If the space provided on the form 30 requesting oral argument is not marked, oral argument is waived.”). Here, Shiver did not file a Form 30, Request for Commission Review, opting instead to submit a letter to the Commission addressing the relative merits of her claims. (R. pp. 1162-1190, 1397) The circuit court noted that rather than re-schedule the hearing set for February 24, 2011, the Commission instead elected to consider all proffered testimony and evidence and to determine the merits of the appeal without oral argument. (R. p. 67) Going further, the circuit court concluded “Claimant’s contentions were well documented and argued in her thirty-four page motion with supporting documents and her position regarding each workers’ compensation claim was individually described. A review of the Commission on the record was not prejudicial or incomplete.” (*Id.*)

Inasmuch as Shiver failed to take necessary steps to request oral argument, and because she cannot demonstrate prejudice resulting from the decision by the Full Commission to dispense with her claims on the written record without oral argument, this Court should affirm.

III. SUBSTANTIAL EVIDENCE SUPPORTS EACH AND EVERY DECISION OF THE FULL COMMISSION TO DENY COMPENSATION BENEFITS.

In addition to the procedural challenges addressed in the preceding sections of this brief, Shiver takes issue with the merits determinations regarding the non-compensability or other denials related to her various claims for workers’ compensation benefits. The claims, which span a number of employers and carriers over a period of several years, are addressed *seriatim* below. In each case, Shiver did not present evidence that would allow

her to meet her burden of proof that she was entitled to any benefits. She argues facts in her brief, but there is no evidence in the record to support these facts. Respondents jointly assert that each and every denial of Shiver's various requests for benefits in her multiple claims is overwhelmingly supported by substantial evidence and should be affirmed.

A. The Orders Denying Benefits In WCC Claim No. 9503744 Are Supported By Substantial Evidence And Should Be Affirmed.

Shiver, who was represented by counsel at the time, entered into a Consent Order limiting her injured body parts to the right foot and right shoulder. (R. pp. 60-62). The evidence clearly shows that Shiver is well educated, with a Bachelor of Science in nursing and Associate Degrees in health information management and paralegal studies. She was studying medical administration as of the time of the hearing. (R. p. 1045, lines 4-18) Additionally, Shiver has extensive experience with the workers' compensation system having seven cases under consideration at the time of the September 4, 2007 hearing, as well as three additional cases which were not presented at that hearing. (R. p. 1036, line 1 – p. 1040, line 21)

The August 24, 1995 Consent Order clearly limits any possible claims to the Claimant's right foot and right shoulder as a result of the January 23, 1995 accident. (R. pp. 60-62) Shiver asserted that her attorney at that time, Thomas White, yelled at her and forced her to enter into the Consent Order. The Commission found that assertion to be unbelievable given the number of times that attorney Thomas White had appeared before the Commission. (R. p. 29, Finding of Fact no. 12) Shiver brought forth absolutely no evidence to support this assertion. She also asserted the single commissioner forced her to withdraw a prior request for a hearing on this claim in 2000. The Commission also

found that this assertion was equally as difficult to believe as the assertions against attorney Thomas White. (R. p. 29, Finding of Fact no. 16) Shiver submitted absolutely no evidence to support this assertion. Shiver made the decision to appear *pro se* in the hearing of September 4, 2007, and brought no evidence that she was mentally incompetent either at that hearing or at the time of the Consent Order being entered into on August 24, 1995. Therefore, all of the evidence in the record substantially supports the Commission's finding that the Consent Order dated August 24, 1995, is binding and limits claims to Shiver's right foot and right shoulder as a result of the January 23, 1995 accident.

Regarding the ruling that Shiver is not entitled to benefits as a result of this claim, she presented absolutely no medical evidence indicating that she had current problems with her right shoulder or right foot or that any current problems she may have had were related to the accident of January 23, 1995. Trident submitted medical evidence including a report from Dr. James McCoy dated August 10, 1995, in which Dr. McCoy states Shiver's subjective complaints concerning her right shoulder and right ankle far outweigh her objective findings. At that point, he stated there was nothing to lead him to believe Shiver had any permanent impairment. (R. p. 642) Dr. McCoy did not believe there was any indication for further evaluation or treatment. (*Id.*) Trident also submitted numerous medicals for treatment Shiver has obtained in subsequent matters. It is noted that in none of these records did Shiver ever complain of any problems with the right shoulder or right ankle. (R. pp. 612-641)

The burden of proof is on Shiver in this case. Again, she presented absolutely no objective evidence to show she has any kind of current problem with her right shoulder or right foot. The medical records submitted by Trident from 1995 through 2003 show she was not having any complaints at those times of any problems with her right ankle or right shoulder, and there is certainly no medical evidence showing that if she does have any current problems with her right shoulder or right ankle that they are causally related to an accident of January 23, 1995. There was more than substantial evidence to support the Commission's finding that Shiver is not entitled to any benefits under the Workers' Compensation Act as related to the January 23, 1995 accident.

B. The Orders Denying Benefits In WCC Claim No. 0126962 Are Supported By Substantial Evidence And Should Be Affirmed.

Shiver sustained an admitted minor injury to her left Achilles tendon when a metal cart struck the back of her left heel while she was exiting the elevator. Respondents admitted the claim and provided all necessary medical treatment. Shiver filed a Form 50 requesting permanent partial disability, but failed to request temporary total disability benefits. (R. pp. 227-230)

Shiver treated with Dr. Durkin at Healthworks, who conducted bilateral EMG's, bilaterals NCS's, and x-rays of the left lower extremity, each of which were returned with normal results. (R. p. 663) After Shiver "begged to see an orthopaedic," Dr. Durkin prescribed physical therapy. (R. p. 1065, lines 9-18) Following physician therapy, Dr. Durkin released Shiver on August 2, 2002 stating: "I really do not have anything more to offer this lady. I do not detect any definite permanent impairment." (R. p. 668)

Dr. McBryde with University Specialty Clinics provided a second opinion and stated: "it is clear that this is not a surgical situation, that this is not a posttraumatic problem, and that there is no further diagnostic or procedural study or treatment that needs to be done. My previous notes related to her final diagnosis and lack of permanent impairment stand." (R. p. 672)

Shiver saw another physician, Dr. Belding at Midlands Orthopaedics. He agreed with the prior opinions, stating: "I think the patient has been thoroughly evaluated. I find no permanent physical impairment. I think there is no other treatment needed at this point and she can be at full activity." (R. pp. 673-674)

Notably, Shiver testified on cross-examination that she fell on the stairs at her home and injured her left heel the day after the date of injury. (R. p. 1071, lines 15-25) It is therefore highly questionable as to whether her subsequent complaints were due to the on-the-job injury or the fall at home.

Therefore, the Commission properly found that Shiver failed to raise the issue of temporary total disability, failed to prove a finding of entitlement to temporary total disability, and failed to establish any permanent impairment as a result of the minor heel contusion on January 15, 2001. Accordingly, substantial evidence in the record supports the Commission's findings and conclusions of law. Respondents contend the Order should therefore be affirmed.

C. The Orders Denying Benefits In WCC Claim No. 0217755 Are Supported By Substantial Evidence And Should Be Affirmed.

Shiver sustained an admitted minor injury to her back on March 23, 2002, when she leaned over in a chair to reach a pen and the chair turned on top of her. Respondents have provided temporary total disability benefits from March 23, 2002, through April 8,

2002, and all necessary medical treatment.

Shiver filed a Form 50 but failed to request permanent disability or additional medical treatment. (R. pp. 224-226) She testified at the hearing that she continued to experience pain in her lower back and down her right hip and sciatica (R. p. 1076, line 10 – p. 1077, line 13).

Dr. Zgleszewski indicated that Shiver had low back pain from prior motor vehicle accidents in 1997 and 2000 and that “there is no aggravation of that preexisting condition with the most recent injury...” (R. p. 679) He also recorded in his notes that Shiver had prior leg symptoms, which had not worsened since the new work injury. (R. p. 678) Dr. Jones indicated on May 9, 2003, Shiver had reached her “baseline level” for both her back and leg/buttock symptoms, was at maximum medical improvement (“MMI”), and suffered no impairment as a result of the work injury. (R. p. 690)

Accordingly, the Commission properly found Shiver failed to establish any permanent impairment as a result of the back injury on March 23, 2002, or that any additional medical treatment was warranted. Therefore, substantial evidence supports the Commission’s findings of fact and conclusions of law. Respondents contend the Order should be affirmed.

D. The Orders Denying Benefits In WCC Claim No. 0227098 Are Supported By Substantial Evidence And Should Be Affirmed.

Shiver sustained a minor injury to the left shoulder when a chart fell onto her. Respondents admitted the claim and provided all necessary medical treatment. Shiver did not miss any work as a result of the injury. Shiver filed a Form 50 requesting a hearing, but failed to claim temporary total disability, additional medical treatment, or permanent disability. (R. p. 231)

The medical evidence showed that when Shiver reported to the emergency room on the date of injury, Dr. Wade recorded that she had “full range of motion of the neck without any pain” and “full range of motion all [sic] extremities actively without pain including the left shoulder.” (R. p. 700)

Shiver followed up with Dr. Jones at Charleston Spine. Dr. Jones found Shiver at MMI on July 1, 2003, finding no permanent impairment and no restrictions as a result of the injury. (R. p. 698) Dr. Jones reported: “I can assess no additional impairment for this injury, as previous impairments have been assessed for both myofascial and cervical facet-generated pain, which was present in this patient to a great extent even prior to the 10/24/02 injury.” (*Id.*)

Accordingly, the Commission properly found Shiver failed to establish any permanent impairment as a result of the left shoulder injury on October 24, 2002. Therefore, substantial evidence supports the Commission’s findings of fact and conclusions of law. Respondents contend the Order should be affirmed.

E. The Orders Denying Benefits In WCC Claim No. 0322274 Are Supported By Substantial Evidence And Should Be Affirmed.

Shiver alleged a slip and fall injury on January 20, 2003, which resulted in alleged injuries to her neck, back, side, left leg, both wrists, both feet, vaginal and perineum areas, and “all body.” Shiver filed a Form 50 but failed to request temporary total benefits, additional medical treatment, or permanent disability. (R. pp. 232-236) She sought payment of her past medical treatment from her personal family doctor.

At the hearing, Shiver testified she was told by a nurse practitioner at Healthworks to seek treatment from her own family doctor. However, the note from Healthworks indicates the Appellant refused to be examined by Healthworks. (R. p. 707)

In spite of being offered “repeatedly” to be seen, she refused to be seen and instead wanted to know if someone would “call in” narcotics for her. (*Id.*)

On cross-examination, Shiver initially denied reporting to Dr. Hook that she tripped over a chair at a hotel in August 2003. (R. pp. 720-721; p. 1088, lines 11-18) She later admitted the accuracy of Dr. Hook’s report, which recounted that she “slipped on carpet at a conference and landed quite violently on her buttocks.” (*Id.*) Additionally, Dr. Hook’s note reported that since slipping on the carpet at the conference, she has had a “moderate amount of low back pain” and had “recently begun to feel a ‘pop’ in her back” and at times a “radiating pain down in her left leg.” (R. p. 721) Dr. Hook further recites that Shiver has had disc problems in the past, and has had “numerous falls and various traumas,” and “seems to be somewhat inclined to get injured relatively easily.” (*Id.*)

Finally, Dr. Hook’s records indicate Shiver was actually diagnosed with a urinary tract infection in the weeks following the alleged injury, explaining Shiver’s abdominal and perineum discomfort. (R. p. 710)

Based on the above evidence, the Commission found Respondents were not responsible for unauthorized medical care, as medical care had been offered through Healthworks. Moreover, the Commission found that Shiver failed to meet her burden of establishing any permanent disability. In light of the lack of evidence supporting Shiver’s contentions and the immediately apparent substantial evidence supporting the Commission’s findings of fact and conclusions of law, Respondents respectfully contend that the Order should be affirmed.

F. The Orders Denying Benefits In WCC Claim No. 0321756 Are Supported By Substantial Evidence And Should Be Affirmed.

Shiver filed a Form 50, Request for Hearing, alleging injury to her back, left side, and knees after she tripped over a phone cord at work on October 23, 2003. (R. pp. 241-244) In connection with that claim, she sought reimbursement of expenses incurred from treatment with unauthorized medical providers. Shiver did not seek additional medical benefits, temporary disability, or permanent disability for her alleged injuries. Respondents Palmetto Health and its carrier, Key Risk Management Services (“Key Risk”), denied benefits in light of Shiver’s refusal to accept authorized medical care, as well as her lack of impairment.

Following her alleged injury on October 23, 2003, Shiver did not seek medical treatment as directed by her employer. (R. p. 1093, lines 1-7; p. 1096, lines 16-22) Similarly, Shiver did not request medical treatment from her employer, and she did not present any reimbursable medical bills at the hearing before the single commissioner. (R. p. 1091, lines 10-12; p. 1091, line 25 – p. 1092, line 3; p. 1092, lines 8-20) Shortly before her alleged work-related injury, Shiver also was treating with Dr. Hook in connection with a fall at the Embassy Suites and had previously injured these same body parts in “numerous falls and stuff. . . .” (R. p. 1100, lines 5-21) Shiver saw Dr. Jones on April 23, 2004, with continued flaring low back pain, for which she received epidural steroid injections and lumbar facet/SI joint blocks and was noted to be at maximum medical improvement on July 7, 2004. (R. pp. 462-546, 743-747)

Shiver saw Jean Massey, a registered nurse in Dr. Hook’s office, on August 14, 2003, when she presented with complaints after a hotel fall, and she received a Medrol Dosepak from Dr. Hook on September 3, 2003. (R. pp. 757-758) Dr. Hook did note that

Shiver had fallen over a phone cord on October 23, 2003, and that she had left chest wall pain with recent unremarkable rib films. (R. pp. 761-762) On February 4, 2005, Shiver saw Dr. Thomas E. Brandt with complaints of chest wall pain of unknown origin; however, her MRIs and x-rays were unremarkable. (R. pp. 728-736) Shiver continued to seek treatment with Dr. Hook, who noted on April 15, 2005, that all work-ups, including MRIs, bone scans, etc., had been negative. (R. pp. 776-779)

Substantial evidence exists to support the single commissioner's finding that Shiver failed to meet her burden of establishing entitlement to reimbursement for medical expenses she alleged incurred as a result of tripping over a phone cord at work. Her only request for benefits in connection with this claim was for reimbursement for the cost of unauthorized treatment. First, Shiver did not request treatment from her employer or follow her employer's guidelines for obtaining treatment. Second, and more importantly, Shiver failed to prove her entitlement to reimbursement for the unauthorized medical treatment because she failed to submit any bills or invoices documenting her claims.

At oral argument before the single commissioner, Shiver claimed she was unaware she was required to present her medical bills, arguing instead that she had already computed the amount of her bills prior to the hearing. (R. p. 25; p. 1092, lines 4-20) Nevertheless, she was advised of her right to counsel and cautioned against proceeding *pro se*; however, she elected to proceed with the hearing without representation. (R. p. 28, Finding of Fact no. 5; p. 1043, lines 18-25) Although Shiver elected to proceed without counsel, it is important to reiterate she is well-educated and has extensive experience with the Workers' Compensation system. Thus, her rationale in not providing documentation of her unauthorized treatment does nothing to lessen her

burden of proving entitlement to reimbursement for medical expenses through proper documentation at a hearing. (R. p. 28, Findings of Fact nos. 6, 9)

G. The Orders Denying Benefits In WCC Claim No. 0616756 Are Supported By Substantial Evidence And Should Be Affirmed.

Shiver alleged injury to her right wrist after using a hole puncher at work on July 17, 2006. (R. pp. 237-240) In connection with this claim, Shiver sought payment for medical services and added an oral request for permanent disability at the hearing. (R. p. 1076, lines 4-19) Palmetto Health and Key Risk denied the claim given Shiver's refusal of medical care and the lack of proof of injury by accident arising out of and in the course and scope of her employment.

While Shiver claims to have sustained another work-related injury while using the hole puncher on July 16, 2006, she was evasive when responding to questions regarding the frequency of use of the hole punch per minute or per hour. (R. p. 1110, line 9 – p. 1111, line 9) Moreover, the majority of Shiver's work day was spent at the computer. (R. p. 1118, lines 5-23) Shiver also testified that when she reported to the coordinator at Health Works as instructed, she would not agree to change doctors because she was currently seeing Dr. Noojin in connection with a fall at her church. (R. p. 1113, lines 13-14; p. 1117, lines 14-25) On July 21, 2006, Shiver saw Dr. Noojin seeking treatment for her left wrist due to the fall at church; however, she did not complain about her right wrist. (R. pp. 1018-1019) Shiver did not seek treatment for her right wrist until September 1, 2006, and the medical records do not describe any work-related accident. (R. pp. 1021, 1023-1024, 1026) Dr. Noojin released Shiver on January 17, 2006, with a 2% impairment rating to her right knee. (R. p. 1027)

Substantial evidence also supports the single commissioner's finding that Shiver did not satisfy her burden of proof regarding her claim for right wrist repetitive trauma injury from using a hole punch. First, Shiver did not tell her primary care physician about her right wrist injury, even though she treated with the physician for a left wrist injury that occurred shortly after the alleged work-related hole punch incident. Second, Shiver refused to see a different physician for her right wrist injury; therefore, she treated with an unauthorized physician. Finally, Shiver was evasive in responding to questions relating to how often she used the hole punch, and most of her work duties were on the computer. (R. p. 26) In response, Shiver argues she told Dr. Noojin about right wrist pain from using a hole punch during her July 21, 2006 appointment, but she cannot explain why Dr. Noojin did not note this complaint in his records. Nevertheless, Shiver failed to present anything at the hearing before the single commissioner beyond her own self-serving testimony that would contradict Dr. Noojin's medical records.

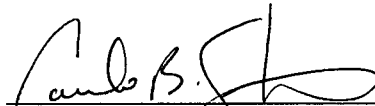
Shiver further argues that she did not plead her right wrist injury as a repetitive trauma injury. This is a distinction without a difference. Regardless of whether her alleged injury is classified as one that occurred from a single use or repetitive use of a hole punch, the claim clearly is not supported by the record evidence presented to the single commissioner. Stated differently, Shiver did not prove injury by accident arising out of and the course and scope of her employment because she failed to mention the injury to her primary care physician at her next appointment. Further, when she did finally mention the alleged injury nearly three months later, she did not state that it was work-related. Finally, she declined medical treatment authorized by her employer, opting instead to treat with an unauthorized provider.

CONCLUSION

For all of the reasons stated herein, Respondents submit that the Order of the circuit court affirming the orders of the Full Commission in their entirety should be affirmed.

August 12, 2015

By:

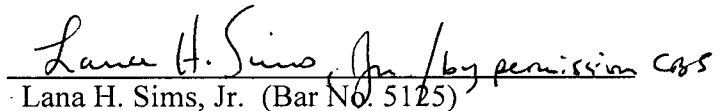


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

AUG 12 2015
SC Court of Appeals

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2013-000887

Gertrude Shiver, Claimant,Appellant,

v.

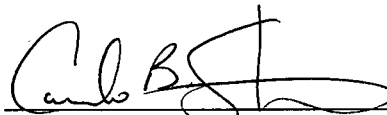
Palmetto Health Richland, Employer, Key Risk Management
Services, Inc., TPA, Palmetto Hospital Trust Services, Carrier,
Trident Regional Medical Center, Employer, and Zurich American
Insurance Company, Carrier, Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the BRIEF OF RESPONDENTS complies
with Rule 211(b), SCACR, as well as the South Carolina Supreme Court's Order dated
April 15, 2014.

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Services, Inc., TPA, Palmetto Hospital Trust Services, Carrier,
Trident Regional Medical Center, Employer, and Zurich American
Insurance Company, Carrier, Respondents.

PROOF OF SERVICE

I certify this 12th day of August 2015 that I have served copies of the BRIEF OF
RESPONDENTS and CERTIFICATE OF COUNSEL by mailing same, postage prepaid
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