

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC File No. 1401281

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SC Court of Appeals

Court of Appeals Case No. _____

Yolanda Lucas, Employee,.....Respondent,

v.

Community Loans of America, Inc., Employer,
and Continental Indemnity Company, Carrier.....Appellants.

PETITION FOR JUDICIAL REVIEW

WHEREFORE, the Appellants, Community Loans of America, Inc. and Continental Indemnity Company, pray that this Honorable Court review the South Carolina Workers' Compensation Commission's Decision and Order dated August 7, 2015 pursuant to the provisions of §1-23-380 of the South Carolina Code of Laws, (1986, as amended) (commonly known as the Administrative Procedures Act) and §42-17-60 of the South Carolina Code of Laws (1976, as amended) (commonly known as the South Carolina Workers' Compensation Act) and reverse the Commission's findings, conclusions and holdings that the Respondent sustained a compensable mental only injury under the Workers' Compensation Act.

The Appellants request review and reversal of the Commission's Decision and Order dated August 7, 2015 on the on the grounds that the findings, inferences, and conclusions and the decision issued therein are in violation of statutory provisions; affected by error law; and are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record

that these findings, conclusions and holding which conclude that the Respondent sustained a compensable mental only injury are not in accordance with applicable law including statutory provisions and South Carolina case law, and moreover, are not supported by substantial evidence in the record.

2. The Appellants assert that the Commission further erred with respect to its Findings of Fact Nos. 2, 5, 6, 7, 8, Conclusion of Law Nos. 2, 3, 4, and "ORDER" section of its Decision and Order in finding that the Respondent satisfied the second required element in proving a mental only injury. §42-1-160(B)(2) states there must be medical causation between the stress, mental injury or mental illness and the stressful employment conditions as supported by medical evidence (expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records or other material that is offered by a licensed health care provider). To the extent that the Commission correctly found that the events on January 11, 2014 were unusual and extraordinary for the Respondent's particular employment, the Appellants assert that the events on January 11, 2014 are not the proximate cause of Respondent's current mental condition. The Respondent was previously diagnosed with anxiety, depression and PTSD in 2004 which according to the Respondent's physician explains the Respondent's reaction to any stressful situation. Even if the Respondent had a temporary aggravation of her mental condition attributable to the events at work on January 11, 2014, the Respondent's current mental condition is the result of subsequent aggravating events that occurred after January 11, 2014. Therefore, the Commission's error is that these findings, conclusions and holding are not in

as is provided in §1-23-380(A);(5);(a);(d);(e); South Carolina Code of Laws, (2006, as amended); and in such cases made and provided on the following grounds and exceptions:

1. The Appellants assert that the Commission erred with respect to its Findings of Fact Nos. 2, 4, 5, 6, 7, 8, Conclusion of Law Nos. 2, 3, 4, and "ORDER" section of its Decision and Order in finding that the Respondent met her burden of proving that the employment conditions on January 11, 2014 were unusual and extraordinary pursuant to the requirements of §42-1-160(B) for a mental only injury. §42-1-160(B)(1) states that stress, mental injuries and mental illnesses arising out of and in the course of employment unaccompanied by physical injury are not considered a personal injury unless the employee establishes by a preponderance of evidence that the employee's employment conditions causing the stress, mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment. The Appellants assert that the Respondent did not present any testimony or submit any evidence to outline what are the normal employment conditions for a payday loan officer in order to allow the Commission to find that the Respondent was exposed to unusual and extraordinary conditions for her particular employment and that the unusual and extraordinary conditions were the proximate cause of her mental illness. Without such evidence as to the normal employment conditions being presented by the Respondent, the decision of the Commission is based on speculation. Further, the Appellants introduced evidence including the Respondent's testimony, the Respondent's physician's testimony, and records pursuant to the Administrative Procedures Act which support that the events on January 11, 2014 were not unusual and extraordinary for her particular occupation. Therefore, the Commission's error is

accordance with applicable law including statutory provisions and South Carolina case law, and moreover, are not supported by substantial evidence in the record.

3. The Commission erred in failing to find and conclude that the Respondent did not meet her burden of proving a mental only injury pursuant to the terms and provisions of the Workers' Compensation Act and the applicable case law.
4. Alternatively the Appellants argue that in the event that the Commission correctly found that the employment conditions on January 11, 2014 were unusual and extraordinary for the Respondent's particular employment and that the Respondent's current mental condition is proximately caused by her employment on January 11, 2014, the Respondent's benefits shall be limited to the period from January 12, 2014 until May 7, 2014 when the Respondent had the documented subsequent aggravations of her underlying PTSD which was initially diagnosed following a robbery in 2004 and prior to her employment with the Employer herein. Accordingly, the Commission erred with respect to Findings of Fact Nos. 2, 4, 5, 6, 7 and Conclusions of Law Nos. 3 and 4 which are not supported by substantial evidence and the applicable law.

WHEREFORE, the Appellants pray that this Honorable Court review the South Carolina Workers' Compensation Commission's Decision and Order dated August 7, 2015 and reverse the Commission's findings, conclusions and holdings that the Respondent sustained a compensable mental only injury under the Workers' Compensation Act. Alternatively, the Appellants would respectfully request that this Court vacate the Commission's findings, conclusions and holdings that the Respondent is entitled to ongoing temporary total disability and medical benefits and remand the matter to the Commission with instructions to address

whether the Respondent's benefits should be limited to the period of time when the Respondent's mental condition was allegedly aggravated by the events on January 11, 2014 and whether her entitlement to benefits shall cease at the time of the subsequent intervening and aggravating events in her personal life.

RESPECTFULLY SUBMITTED,

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October 15, 2015

Charleston, South Carolina