

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

APPELLATE PANEL
The Honorable R. Michael Campbell, II,
The Honorable T. Scott Beck and
The Honorable Avery Wilkerson

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NOV 30 2015

SC Court of Appeals

WCC NO. 1119818

Appellate Case No: 2015-001380

Shameka S. Green, Employee,

Appellant

v.

Teleperformance Group, Inc.,
Employer,

AND

Zurich North America, Carrier,

Respondents

APPELLANT'S FINAL REPLY BRIEF

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TABLE OF CONTENTS

Table of Authorities.	ii
Reply Arguments	1
Summary	4

TABLE OF AUTHORITIES

Cases

<u>Port Oil Company, Inc., v. Allen,</u> 332 S.E.2d 787 (1985)	2
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REPLY TO ARGUMENTS

The Respondent in its 26 page Brief conveniently and completely ignores the evidence contemporaneous with the Change of Condition filing and repeatedly reiterates the same circumlocutory position that the opinion of a prior treating physician whose treatment effectively ended in April 2013 is a valid basis for the denial of the Change of Condition Petition. The conclusory assertions of the Respondent are designed to distract from the foundational issues in this matter. The Respondent has tried to create a great war of opinions between Dr. Noojin and Dr. Jackson when in fact their opinions are based on completely different medical evidence. There is no conflict of evidence in this case just a failure of juxtaposition of the opinions.

The Respondent argues that Appellant wants the latest x-rays to control when in fact it is the best evidence which should control the resolution of the issue. The Appellant does not want several bites of the apple but just one fair apple bite. The Workers' Compensation Appellate Panel did not properly assess and weigh the evidence of differences in the medical opinions but simply accepted an antiquated opinion without giving adequate or in fact any consideration to the opinion contemporaneous with the

parameters of the change of condition.

Thus, the Appellate Panel blindly viewed the evidence from one side of the case in direct contravention of its appointed task. "Evidence which concerning the record as a whole, would allow reasonable minds to reach the conclusion that Commission reached, and is neither a mere scintilla of evidence nor evidence viewed blindly from one side of the case." Port Oil Company, Inc., v. Allen, 332 S.E.2d 787 (1985).

The Commission Appellate Panel in blindly viewing the evidence from only one perspective reached a conclusion which is clearly erroneous in the context presented because it gave no meaningful assessment or consideration of the best contemporary evidence. "Decision may be reversed where administrative findings, inferences, conclusions or decisions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, so that substantial rights have been prejudiced." Port Oil Company, Inc., v. Allen, Supra.

Respondent engages in semantic gamesmanship in a full fledged effort to deify a medical opinion which they know was outdated and not illustrative of the contemporary facts.

At the very least, the Commission Appellate Panel should have exercised its discretion and provided a format wherein all the medical evidence was addressed and assessed from an objective perspective rather than blindly accepting Dr. Noojin's opinion.

Dr. Noojin's opinion was given over a year after his last date of treatment and the evidence on which his opinion was based had become obsolete as specifically demonstrated by Dr. Jackson's opinion based on contemporary x-rays.

Most tellingly, the Respondent states on page 15 of Respondent's Brief "given that the objective findings regarding Claimant's knee condition did not change in the more than 14 months between August 2012 and December 2013, there is no conclusive medical evidence of and no reason to believe she experienced a drastic change of condition in the 9 months between December 2013 and when she saw Dr. Jackson on September 5, 2014. To the contrary, there was every reason to believe that Claimant experienced a change of condition during this period as it is vividly illustrated by the x-rays reviewed by Dr. Jackson but not viewed by Dr. Noojin. Even if Dr. Noojin was correct that there was no evidence of a change of condition as of December 2013, he never gave an opinion in regard to evidence of change of condition as of September 10, 2014 when Dr. Jackson reviewed the contemporaneous x-rays. Thus, the only evidence relevant to that time period was provided by Dr. Jackson.

Respondent further states the Commission properly accorded more weight to Claimant's treating physician's opinion than that of her handpicked IME physician Dr. Jackson. This statement blatantly ignores the fact that Dr. Noojin had not been

Claimant's treating physician since April 2013. Thus, the Respondent in gloriously repetitive manner attempts to hide behind the facade of a "treating" physician's opinion when he was no longer a treating physician.

SUMMARY

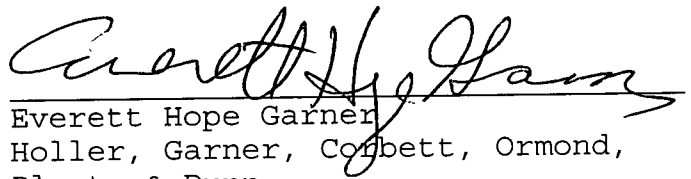
In summary, the Workers' Compensation Appellate Panel has effectively deprived the Claimant of the opportunity of achieving a fair assessment of the medical evidence and their refusal to even allow an objective analysis of all the medical evidence places Claimant in an impracticable position incapable of proving her Petition for Change of Condition. This issue could have easily been resolved if the Commission had exercised its discretion and applied an objective medical analysis. To allow Dr. Noojin to give an opinion on the present circumstances of Claimant's condition without reviewing the present medical evidence is unconscionable and anomalous to the stated purposes of the Workers' Compensation system. The Respondent does not want justice as they state for all parties but only a blind viewing of the evidence in their favor.

The Respondent in their Brief at page 9 states "however, it is no one's fault but Claimant's own that she did not provide Dr. Noojin with all the relevant information when she asked him to sign an affidavit on her behalf." This statement discounts the

fact that Dr. Noojin quite unexpectedly reneged on the specific opinion that he had given in the affidavit thus placing Claimant in an untenable position from which she should have been allowed to attempt to extricate herself by getting a contemporaneous medical opinion.

Justice demands that a decision on a Change of Condition be based on the condition that exists for the period of up to a year after the volatile opinion of the "treating" physician. Dr. Noojin's opinion in this case was based on a medical position which obviously had not evolved at the time he ceased being a treating physician and therefore should be dismissed in view of the only true evidence related to the issue of change of condition.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Everett Hope Garner", is written over a horizontal line.

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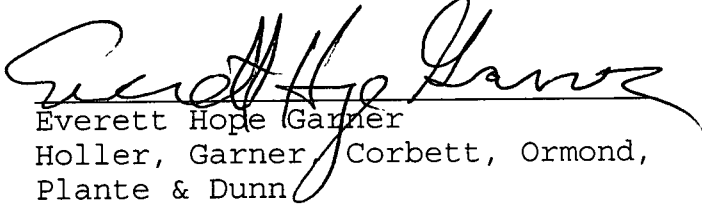
Zurich North America

Respondents

PROOF OF SERVICE

I certify that I have served the Appellant's Final Brief and Appellant's Final Reply Brief on Teleperformance Group, Inc., and Zurich North America by depositing a copy of it in the United States mail, postage prepaid, on November 30, 2015, addressed to their attorney of record, Helen F. Hiser, Esquire, McAngus Goudelock & Courie, P.O. Box 650007, Mt. Pleasant, SC 29465.

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