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SC Court of Appeals

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1411717

Veronica Sullivan,)
)
 Employee/Claimant/Respondent,)
)
 v.)
)
 Richland County,)
)
 Employer,)
)
 and)
)
 SC Association of Counties SIF,)
)
 Carrier,)
)
 Defendant(s)/Appellants.)
)

AFFIRMED

Appellate Panel Review held in Columbia, South Carolina, on September 22, 2015, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed on: January 12th, 2016.

APPEARANCES: Claimant/Respondent represented by
Daniel E. Peagler, Esquire

Defendant(s)/Appellant(s) represented by
B. Gibbs Leaphart, Jr., Esquire

STATEMENT OF THE CASE

The parties were heard by Commissioner T. Scott Beck on February 26, 2015, in

Columbia, South Carolina. As a result of the Hearing, the single Commissioner issued an Order dated June 24, 2015 from which the Defendants, as Appellants, sought review pursuant to S.C. Code Ann. § 42-17-50 (as amended). Within the statutory period, counsel for the Defendants filed an Application for Review in the case setting forth assignments of error, copies of which were furnished to all interested parties prior to oral argument presented before the Appellant Panel on July 8, 2015, as set forth below:

1. Did the Hearing Commissioner erred {sic} in finding the claimant sustained a compensable injury by accident; said error being that the greater weight of the evidence in the record fails to support the claimant's injury was causally-related to her employment?
2. Did the Hearing Commissioner err in Finding of Fact #2, wherein he found as a fact that the claimant's right ankle injury arose out of and in the course of employment; said error being the greater weight of the evidence fails to support the same?
3. Did the Hearing Commissioner err in Finding of Fact #3, wherein he found as a fact that the claimant's left shoulder injury arose out of and in the course of employment; said error being the greater weight of the evidence fails to support the same?
4. Did the Hearing Commissioner err in finding that the seizure alone was not violent enough to cause the claimant's injury; said error being the greater weight of the evidence in the records fails to support same?
5. Did the Hearing Commissioner err in finding the claimant's left shoulder injury would not have occurred without the presence of the desk and chair provided by the employer; said error being the greater weight of the evidence in the record fails to support this finding?
6. Did the Hearing Commissioner err in finding the greater weight of the evidence in the record shows the claimant's right ankle injury would not have occurred without the presence of the desk and chair provided by the employer; said error being there is no evidence in the record via witness testimony or otherwise to support same?
7. Did the Hearing Commissioner err in finding the claimant sustained a compensable injury by accident to her right ankle and left shoulder; said error being that there is no medical evidence to within a reasonable degree of medical certainty causally-linking the injuries to the desk and the chair in question?

8. Did the Hearing Commissioner err in finding and concluding the claimant is entitled to additional medical care; said error being the greater weight of the evidence in the record supports that this is not a compensable injury by accident?
9. Did the Hearing Commissioner err in finding and concluding the claimant is entitled to temporary total disability; said error being the greater weight of the evidence in the record supports this is not a compensable injury by accident?
10. Did the Hearing Commissioner err failing to find the claimant was non-compliant with medical care, specifically weight bearing restrictions from her own chosen doctors; said error being the greater weight of the evidence in the record, including that of the treating physicians, supports the claimant was non-compliant with her weight bearing restrictions on more than one occasion?
11. Did the Hearing Commissioner err in failing to find and conclude the claimant's noncompliance resulted in a material worsening of her condition leading to additional surgeries which would not have been necessary from the alleged work incident alone?
12. Did the Hearing Commissioner err in failing to find the claimant sustained a subsequent intervening accident as a result of her noncompliance which broke the causal chain of connection between the original alleged accident and her need for multiple surgeries?
13. Did the Hearing Commissioner err in finding and concluding the claimant sustained a compensable injury by accident; said error being the greater weight of the evidence in the record support the desk and chair do not constitute a special hazard or danger inherent to her employment pursuant to the Supreme Court's decisions in Bagwell v. Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955); and Nicholson v. S.C. Department of Social Services, 2015 WL 161719.
14. Did the Hearing Commissioner err in failing to find the desk and chair were common to the neighborhood and not peculiar to her employment; said error being the greater weight of the evidence supports same?
15. Did the Hearing Commissioner err in finding the claimant's injuries were caused by the desk and chair; said error being there is no medical evidence that the desk and the chair contributed to the effect of the fall or worsened her injury in any way?

All testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration. In addition, the parties have briefed and orally argued their positions before the Panel.

In an Appellate Panel review under S.C. Code Ann. § 42-17-50, the Commission's Appellate Panel shall review the award, weigh the evidence presented at the initial hearing, and, if good ground be shown therefore, make its own findings and conclusions consistent with or inconsistent with those of the Hearing Commissioner.

After careful review of the record in this case, the Commission, by unanimous vote, has determined that all of the Hearing Commissioner's Findings of Fact and Rulings of Law are correct as stated. The Hearing Commissioner's Order is affirmed in its entirety, and the Commissioner's Findings of Fact and Rulings of Law, as adopted below, are hereby the law of this case.

FINDINGS OF FACT

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended to date, with Richland County as the Employer, and South Carolina Association of Counties as the insurance carrier; and the Claimant as the employee of the employer on August 18, 2014 while working at Richland County Coroner's Office.
2. The Claimant, Veronica Sullivan, did sustain bodily injury on August 18, 2014, to her right ankle while employed by Richland County and such injury arose out of and in the course of her employment.
3. The Claimant, Veronica Sullivan, did sustain bodily injury on August 18, 2014, to her left shoulder while employed by Richland County and such injury arose out of and in the course of her employment.
4. The parties stipulate that the seizure is an idiopathic event.

5. I specifically find that claimant did not fall to the floor during the course of the seizure.
6. I found all witnesses to be credible in their testimony.
7. The Claimant, Veronica Sullivan, never fell to the floor as a result of her seizure.
8. The seizure was not violent enough to have caused the injuries to the Claimant in and of itself; the preponderance of the evidence clearly shows the injury to the Claimant's left shoulder would not have occurred without the presence of the desk and chair provided by the Claimant's employer.
9. The testimony of Ms. Williams confirms claimant's left arm struck the desk 2-3 times.
10. While there is no direct testimony regarding the Claimant's right ankle striking the chair, the testimony of witnesses compels me to find that it did; the seizure was not violent enough to have caused the injuries to the Claimant in and of itself; and the preponderance of the evidence clearly shows the injury to the Claimant's right ankle would not have occurred without the presence of the desk and chair provided by the Claimant's employer.
11. The testimony of Ms. Williams confirms claimant's left arm struck the desk 2-3 times.
12. The average weekly wage is \$417.78, and the weekly compensation rate is \$278.54.
13. The injury required medical care for the period from August 18, 2014, and continues; the Claimant has not reached maximum medical healing as of this date; and further medical care is necessary, as it will tend to lessen the period of disability.
14. The Claimant's incident where her prescribed wheelchair broke, causing her additional injuries, was related to the original accident in that the treatment which necessitated the wheelchair was originally caused by the work accident of August 18, 2014.

15. The Claimant has not reached maximum medical improvement, as additional medical care is necessary in order to lessen the period of disability.

16. The Claimant is entitled to temporary total disability benefits due to the injuries to her right leg/ankle and her left shoulder from August 18, 2014 to November 3, 2014, and from January 5, 2015 to the present and continuing until agreement of the parties or by order of the Commission.

17. I find that at the time of the accident, the Claimant was in the scope of her employment.

18. I find Defendant's non-compliance argument inapplicable in this matter.

CONCLUSIONS OF LAW

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

1. Under §42-1-160, the Claimant did sustain injury by accident, said accident arising out of and in the course of her employment.

2. Under §42-9-10 and §42-1-120, the Claimant is entitled to compensation for temporary total disability.

3. Under §42-15-60, the Claimant is entitled to medical care to her right ankle and left shoulder, as it will tend to lessen the period of disability.

After careful review of the record in this case, the Commission, by unanimous vote, has determined the following findings of fact and law should be added to the order of Chairman T.

Scott Beck dated June 24, 2015:

ADDITIONAL FINDINGS OF FACT

19. We find the testimony showed the desk and chair involved in the injuries to the Claimant were not common to the neighborhood and peculiar to her employment.

ADDITIONAL CONCLUSIONS OF LAW

4. Based on the Supreme Court's decisions in Bagwell v. Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955); and Nicholson v. S.C. Department of Social Services, 2015 WL 161719, the desk and chair do constitute a special hazard or danger inherent to her employment

ORDER AND AWARD

THEREFORE, it is Ordered that the Defendants shall make the following payments:

1. The Defendants shall pay temporary total disability benefits in the amount of \$278.54 per week from August 18, 2014 to November 3, 2014, and from January 5, 2015 to the present and continuing until agreement of the parties or by order of the Commission.
2. The Defendants shall pay for charges for the Claimant's causally related medical care to her right ankle, right leg, and left shoulder (including but not limited to treatment provided by Palmetto Health Baptist, Dr. Coleman Fowble, Richland County EMS, Moore Orthopedics, and Midlands Orthopedics) from the date of the injury and continuing until further Order of this Commission.

DECISION AND ORDER OF THE COMMISSION ON APPEAL

IT IS THEREFORE ORDERED that the Decision and Order of the Hearing Commissioner is hereby affirmed by the Appellate Panel of the Commission with Findings of Fact and Law added.

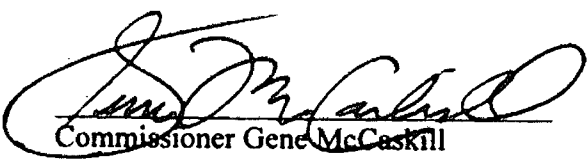
AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION



Commissioner Avery B. Wilkerson, Jr.

I CONCUR:



Commissioner Gene McCaskill



Commissioner Melody L. James

January 12th, 2016

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 Kim Falls on January 12, 2016