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SC Court of Appeals

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

W.C.C. FILE NO: 1303989

Clarence B. Jenkins

vs.

Amazon.Com DEDC, LLC

AND

American Zurich Ins. Co.

EMPLOYEE,
CLAIMANT/RESPONDENT

EMPLOYER

CARRIER,
DEFENDANTS/APPELLANTS.

Appellate Panel Review held in Columbia, South
Carolina, on December 14, 2015 pursuant to notices timely
and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed: _____

February 26, 2016

APPEARANCES:

Claimant/Appellant appeared *pro se*.

Defendants/Respondents represented by J. Russell Goudelock, II Esquire
of McAngus Goudelock & Courie, L.L.C of Columbia, South Carolina.

STATEMENT OF THE CASE

This claim arises out of an admitted incident at work occurring on February 10, 2013 when Claimant/Appellant ("Claimant") leaned over and struck his head on a table. Defendants/Respondents ("Defendants") furnished Claimant with medical evaluation and treatment. No disability compensation benefits were paid.

Claimant filed multiple Forms 50. Claimant contends that he has sustained various compensable injuries and conditions as a result of his incident at work. He seeks additional medical examination and treatment, temporary total disability compensation benefits and permanent disability benefits.

Defendants timely filed responsive Forms 51. Defendants admit that the Claimant experienced an incident at work, but submit that the incident resulted in only mild trauma to the Claimant's head and caused no disabling injury entitling Claimant to any compensation benefits or additional medical benefits. Defendants assert that that Claimant has reached maximum medical improvement from any affects from his mild head trauma.

The issues presented were heard by the Hearing Commissioner on May 21, 2015 in Columbia, South Carolina. In a Decision and Order dated August 14, 2015, the Hearing Commissioner concluded that Claimant failed to meet his burden of proof by a preponderance of the evidence that he sustained any disabling injury or that he is entitled to any compensation benefits or further medical benefits. Claimant's claim for further medical benefits and disability compensation benefits was denied.

Within the statutory period, Claimant timely filed a Form 30 Request for Commission Review, dated August 25, 2015. Claimant asserted 38 grounds for review of purported errors in the Hearing Commissioner's Decision and Order. Claimant also attached to his Form 30

numerous exhibits, including some exhibits that were not part of the record before the Hearing Commissioner. Subsequently, multiple motions and replies seeking to exclude and include Claimant's post-record exhibits were filed by the parties on September 24, 2015, September 28, 2015, October 9, 2015, and October 15, 2015. Additional exhibits were attached to Claimant's motions that were also not part of the record before the Hearing Commissioner. Claimant and Defendants filed appellate briefs on October 19, 2015 and November 11, 2015, respectively. The Appellate Panel heard oral arguments by the parties at a review hearing held in Columbia, South Carolina on December 14, 2015.

EVIDENTIARY MOTIONS BEFORE THE APPELLATE PANEL

Prior to receiving oral arguments by the parties addressing Claimant's substantive grounds for review, the Appellate Panel heard oral arguments addressing the parties' motions and replies regarding Claimant's exhibits attached to his Form 30 and subsequent motions. Claimant contends that the Hearing Commissioner improperly applied *S.C. Code Reg. 67-611* regarding Claimant's failure to submit a Pre-hearing Brief. Defendants assert that *S.C. Code Reg. 67-612* governs admission of documentary evidentiary exhibits offered by Claimant and submit that Claimant failed to properly comply. Defendants contend that Claimant's attempts to admit evidentiary exhibits after the close of the record before the Hearing Commissioner violates applicable law and such exhibits should be excluded as inadmissible evidence. We agree.

At the commencement of the hearing below, the Transcript of Record set forth extensive discussions that took place between the Hearing Commissioner and the parties regarding Claimant's attempts to submit bundles of unidentified evidentiary exhibits. In response to Defendants' objections, Claimant was advised by the Hearing Commissioner that the hearing would be postponed if Claimant wished to exercise his right to have and/or obtain legal counsel

to represent him. The Claimant had been previously represented by legal counsel, but this relationship was terminated. The Claimant testified that he had been advised by Defendants' legal counsel to obtain legal representation. The Claimant declined to retain legal counsel and elected to proceed with the hearing *pro se*.

Since Claimant proceeded *pro se*, the Hearing Commissioner improperly applied *S.C. Code Reg. 67-611* regarding Claimant's failure to submit a Pre-hearing Brief. However, such error is harmless. *S.C. Code Reg. 67-611* does not govern admission of experts' reports. Claimant failed to comply with *S.C. Code Reg. 67-612* regarding admission of experts' reports as evidence at the hearing. Nonetheless, *S.C. Code Ann. Section 42-17-50* and *S.C. Code Reg. 67-707* permit the Appellate Panel broad discretion to receive further evidence and/or rehear the parties if good grounds exist or new evidence arises that is of the same nature and character required for granting a new trial. See *Spearman v. F.S. Royster Guano Co.*, 188 S.C. 393, 199 S.E. 530 (1938).

In the discretion and judgment of the Appellate Panel, good grounds do not exist to permit into the record admission of Claimant's proposed exhibits that reflect evidence already in existence at the time of the hearing below. It was incumbent upon Claimant to comply with *S.C. Code Reg. 67-612* and other applicable law regarding such evidence. He failed to do so. Claimant was afforded an opportunity, and in fact urged to take advantage of it, at the beginning of the hearing to cure the circumstances and he elected to proceed. Other exhibits reflecting any purported new evidence do not satisfy the requirements set forth in *S.C. Code Reg. 67-707C*. Admission of such evidence violates due process and other rights set forth in the South Carolina Administrative Procedures Act, the South Carolina Workers' Compensation Act, the South Carolina Workers' Compensation Regulations and other applicable law.

Pursuant to *S.C. Code Ann. Section 42-17-50, S.C. Code Regs. 67-611, 67-612, 67-707* and other applicable law, the exhibits offered by Claimant after the close of the record in the hearing below are not properly before the Workers' Compensation Commission as admissible after-discovered or new evidence, or as admissible evidence in any other manner at the hearing below. Consideration of such exhibits at this time by the Appellate Panel is legally inappropriate. Defendants' Motion to Exclude Claimant's Exhibits is **GRANTED**. Claimant's Motions to Include Claimant's Exhibits is **DENIED**.

CLAIMANT'S GROUNDS FOR REVIEW BEFORE THE APPELLATE PANEL

The Appellate Panel also heard oral arguments by the parties addressing Claimant's substantive grounds for review of the Hearing Commissioner's Decision and Order. In the Appellate Review, the Appellate Panel shall, pursuant to *S.C. Code Ann. Section 42-17-50* and other applicable law, review the award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the Hearing Commissioner. *Pack v. State Dept. of Transportation*, 381 S.C. 526, 673 S.E.2d 461 (S.C. Ct. App. 2009). The scope of review of the Appellate Panel is not limited. The Appellate Panel can, like the Hearing Commissioner, consider all of the evidence and reach its own findings of fact and conclusions of law. *Lowe v. Am-Can Transport Services, Inc.*, 282 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984). The Appellate Panel is not necessarily bound by the Hearing Commissioner's findings of fact, and is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Hearing Commissioner. *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). Workers' compensation awards may not be based on surmise, conjecture, or speculation, but must be founded on

evidence of sufficient substance to afford a reasonable basis for it. *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); *Sharpe v. Case Produce Co.*, 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997), rev'd on other grounds.

After careful and complete review and consideration of all documentary evidence and testimony in the record, the file of the Workers' Compensation Commission, the Appellate Briefs and the oral arguments by the parties, the Appellate Panel, by unanimous vote, has determined that all of the Hearing Commissioner's Findings of Fact and Conclusions of Law in his Decision and Order, dated August 14, 2015, are correct as stated. Accordingly, the Findings of Fact and Conclusions of Law set forth below shall become the law of the case. The Decision and Order of the Hearing Commissioner is **AFFIRMED IN FULL**.

FINDINGS OF FACT

Based upon the greater weight and preponderance of the substantial evidence in the whole record, the following Findings of Fact are rendered:

1. The Claimant was employed by Amazon.Com DEDC, LLC ("Amazon") at its facility in West Columbia, SC on February 10, 2013 at the time of his work incident. Amazon had workers' compensation insurance coverage with American Zurich Insurance Company. [Stipulation No. 2 by the parties].
2. The Claimant earned average weekly wages of \$489.09 at the time of his work incident. [Stipulation No. 3 by the parties].
3. Claimant experienced an incident at work on February 10, 2013. He struck his head on the edge of a table while bending over to retrieve an object from the floor. Claimant did not fall down and suffered no loss of consciousness or alteration in awareness. [Transcript of Hearing, pp. 49-51 and multiple APA submissions].

4. Claimant's initial presentation for medical evaluation reflected no visible evidence of any injury, any swelling, any discoloration or broken skin, and no outward evidence of any injury or neurological deficits. [APA No. 6, pp. 50-53].

5. Similarly, Claimant's subsequent presentation for medical evaluation at HealthWorks several days after the work incident demonstrated no objective manifestations of any neurological deficits or other injury. A CT scan of the head was normal. On February 15, 2013, Claimant reported that his symptoms were much improved. He was pronounced able to work full-duty without restriction. No return appointments or further evaluations were recommended. [APA No. 5, pp. 35-49].

6. Subsequent medical evaluations two months later at Palmetto Health Richland Memorial Hospital Emergency Room and at HealthWorks reflected that Claimant's neurological and other clinical examination continued to be normal. The emergency room physician directed Claimant to see his family physician for high blood pressure, but otherwise he was not found to need any other evaluation or management. HealthWorks stated that the Claimant's current symptoms did not appear to be related to his February 2013 work injury and were more likely related to other health issues. The HealthWorks physician recommended that the Claimant see his family physician for follow-up of non-work-related conditions, stating that the cause of Claimant's problems is not known and the objective findings are not consistent with a history of a work-related etiology. Claimant was given work restrictions but it was noted that they were not caused by the work incident. [APA No. 4, pp. 23-26; APA No. 5, pp. 27-34].

7. On August 26, 2013 and October 23, 2013, Mahmoud Abu-Ata, M.D., a neurologist, noted that at the time of the work incident Claimant had no loss of consciousness or awareness and that he suffered no scalp laceration or bleeding. Claimant exhibited a normal

neurological and other clinical examination. Dr. Abu-Ata assessed Claimant's condition as "description of post traumatic headache," with possible migraine, rebound analgesic headache, hypertension and tension component. The Claimant refused to undergo CSF examination for evaluation of headaches. Dr. Abu-Ata recommended an MRI of the brain, an MRI of the cervical spine, and nerve conduction studies with EMG testing. MRI scanning of the brain was normal. Nerve conduction studies and EMG testing was normal. MRI scanning of the neck revealed multi-level mild-moderate degenerative disc disease and Dr. Abu-Ata recommended that Claimant be evaluated by a spine surgeon for evaluation of cervical spine disease. The Claimant failed to show for a follow-up visit with Dr. Abu-Ata on December 23, 2013 and he canceled his appointment with Dr. Abu-Ata on January 23, 2014. [APA No. 2, pp. 4-13].

8. Neurological evaluation by Charles S. Jervey, M.D., a neurologist, on November 19, 2013 noted that the Claimant experienced no loss of consciousness at the time of his work incident, that the CT and MRI scans of the head were normal, and that the MRI scan of the neck did not reveal anything that would be expected to cause symptoms. Dr. Jervey opined that the Claimant had sustained a mild head injury which should not cause Claimant's alleged ongoing symptoms and would not be expected to cause permanent nor long-term recurring symptoms. He did not find any cognitive impairment. Dr. Jervey did not feel that any other symptoms were caused by or related to the Claimant's work incident and did not recommend any work restrictions. [APA No. 3, pp. 14-15].

9. Neurological evaluation by David Stickler, M.D., a neurologist, on August 20, 2014 also noted that the Claimant had not experienced any loss of consciousness, dizziness, memory loss or laceration initially at the time of his work incident and that Claimant's current clinical examination was unremarkable. Dr. Stickler opined that the history of Claimant's work

injury did not support a concussive event and that Claimant's complaints of chronic daily headaches should not be caused by mild head trauma from Claimant's work incident. Dr. Stickler concluded that the Claimant's other symptoms were not related to the work incident. He felt that the Claimant had previously reached maximum medical improvement. [APA No. 1, pp. 1-3].

10. Dr. Stickler testified that the Claimant's history and presentation did not reflect that he had experienced even a mild concussive event; that any current symptoms would not result from Claimant's work incident; that the majority of people who have like degrees of head trauma improve within the first month, or within a matter of weeks; that Claimant had most likely reached maximum medical improvement by the time of his October 23, 2013 evaluation by Dr. Abu-Ata, which was more than eight months following the work incident; that there was no permanent impairment to the Claimant's brain; that any physical restrictions were based solely upon the Claimant's subjective complaints and that there were no objective findings that would require that any type of physical restrictions be imposed as any result from Claimant's work incident; that no medications would be required because of Claimant's work incident; and, that no effects of the work incident required further evaluation or referral of Claimant to other medical specialists for examination. [Defendants' Exhibit No. 2].

11. The Claimant was able to continue working during the initial months following his work injury. [Transcript of Hearing, p. 50; Defendants' Exhibit No. 1].

12. Medical evidence supports a causal relationship from the work injury to Claimant's complaints of initial headaches only. Drs. Jervey and Stickler state that any work-related headaches should have resolved during the initial months following Claimant's mild head trauma and that any subsequent headaches are not related to Claimant's work incident. [APA

No. 4, pp. 23-26; APA No. 5, pp. 27-34; APA No. 2, pp. 4-13; APA No. 3, pp. 14-15; APA No. 1, pp. 1-3; Defendants' Exhibit No. 2].

13. Medical evidence fails to support any causal relationship to Claimant's other complaints or symptoms, including his eyes, ear, legs, feet, neck, shoulders, hands, back and anxiety. Dr. Abu-Ata's records do not comment upon any relationship from Claimant's work injury to his other multiple and varied symptoms. Dr. Jervey opines that Claimant's other symptoms are not related to his work incident. Dr. Stickler similarly opines that Claimant's other symptoms are not related to his work incident. [APA No. 4, pp. 23-26; APA No. 5, pp. 27-34; APA No. 2, pp. 4-13; APA No. 3, pp. 14-15; APA No. 1, pp. 1-3; Defendants' Exhibit No. 2].

14. Claimant has seen numerous medical care practitioners in several different settings over a period of almost two years without acknowledgement by Claimant that any treatment has improved the Claimant's description of his complaints and symptoms. [Transcript of Hearing, pp. 56-58].

15. Claimant complains of ongoing symptoms and multiple conditions that he says prevent him from working. However, Claimant is able to drive a car, work on his computer, actively email, actively post on Twitter and actively post on Facebook. During the year between May 17, 2014 and the hearing on May 21, 2015, the Claimant posted 1,066 tweets on Twitter, which averages greater than three tweets per day. His Facebook posts reflect that he attended at least two political rallies during that same period of time. None of his Twitter or Facebook posts reflect any complaints or descriptions of his symptoms or contentions regarding disability. Claimant's regular and daily use of his computer is inconsistent with his complaints that vision and light trigger his symptoms. His attendance at rallies is inconsistent with his complaints that

noise triggers his symptoms. [Transcript of Hearing, pp. 53-55, 58-61, 64-72, 77-80; Defendants' Exhibit No. 3; Defendants' Exhibit No. 4].

16. Claimant reached maximum medical improvement by October 23, 2013 from any effects from his work incident. After that date, no further medical treatment or evaluation was because of the injury or tended to lessen any period of disability. [APA No. 4, pp. 23-26; APA No. 5, pp. 27-34; APA No. 2, pp. 4-13; APA No. 3, pp. 14-15; APA No. 1, pp. 1-3; Defendants' Exhibit No. 2].

17. Claimant was not incapable because of his work incident from earning the same or similar wages. Any lost time from work was not because of any disabling injury from his work incident. [Transcript of Hearing, pp. 50, 53-61, 64-72, 77-80; APA No. 4, pp. 23-26; APA No. 5, pp. 27-34; APA No. 2, pp. 4-13; APA No. 3, pp. 14-15; APA No. 1, pp. 1-3; Defendants' Exhibit No. 2; Defendants' Exhibit No. 3; Defendants' Exhibit No. 4].

18. Claimant has sustained no permanent lost earnings capacity because of his work incident. [Transcript of Hearing, pp. 50, 53-61, 64-72, 77-80; APA No. 4, pp. 23-26; APA No. 5, pp. 27-34; APA No. 2, pp. 4-13; APA No. 3, pp. 14-15; APA No. 1, pp. 1-3; Defendants' Exhibit No. 2].

19. Claimant has sustained no permanent specific loss of use to any body parts because of his work incident. [Transcript of Hearing, pp. 50, 53-61, 64-72, 77-80; APA No. 4, pp. 23-26; APA No. 5, pp. 27-34; APA No. 2, pp. 4-13; APA No. 3, pp. 14-15; APA No. 1, pp. 1-3; Defendants' Exhibit No. 2].

CONCLUSIONS OF LAW

Based upon the Findings of Fact determined above and applicable law as set forth below, the following Conclusions of Law are rendered:

1. Pursuant to S.C. Code Ann. Sections 42-1-120, 42-1-160, and other applicable law, Claimant did not sustain any compensable disabling injury to his head, brain, eyes, ear, legs, feet, neck, shoulders, hands, back or anxiety by accident arising out of or in the course of his employment.

2. Pursuant to S.C. Code Ann. Sections 42-1-120, 42-15-60, and other applicable law, Claimant is not entitled to provision by Defendants of any additional medical evaluation and/or treatment after October 23, 2013.

3. Pursuant to S.C. Code Ann. Sections 42-1-120, 42-15-60, and other applicable law, Defendants shall be responsible only for payment for medical evaluation or treatment authorized and furnished to Claimant by Defendants, in amounts subject to the medical fee scheduled promulgated by the South Carolina Workers' Compensation Commission.

4. Pursuant to S.C. Code Ann. Sections 42-1-120, 42-1-160, 42-9-10, 42-9-20, and other applicable law, Claimant is not entitled to any temporary disability compensation benefits.

5. Pursuant to S.C. Code Ann. Sections 42-9-120, 42-1-160, 42-9-10, 42-9-20, 42-9-30, and other applicable law, Claimant is not entitled to any permanent disability compensation benefits.

6. Pursuant to S.C. Code Ann. Section 42-1-40 and other applicable law, the applicable compensation rate is \$326.08.

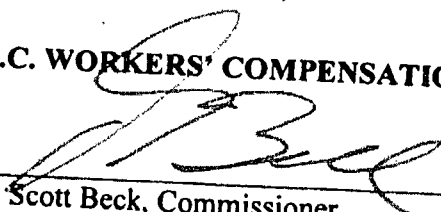
ORDER

IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner is **AFFIRMED IN FULL**. Claimant failed to meet his burden of proof by a preponderance of the evidence that he sustained any disabling injury or that he is entitled to any compensation benefits or further medical benefits. Claimant's claim for further medical benefits and disability

compensation benefits is hereby **DENIED**.

AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION

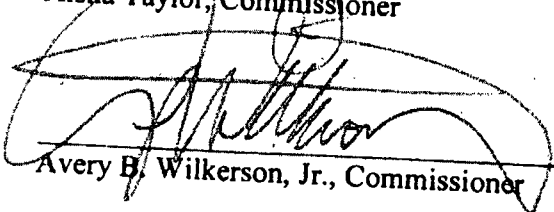


T. Scott Beck, Commissioner
For the Appellate Panel

WE CONCUR:



Aisha Taylor, Commissioner



Avery B. Wilkerson, Jr., 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 February 26, 2016

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