

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
CLARENCE WINFREY, )  
Claimant/Plaintiff, )

v. )

AMERICAN FIRE & CASUALTY )  
INSURANCE COMPANY C/O LIBERTY )  
MUTUAL GROUP, )

Carrier/Defendant, )

and )

The State of South Carolina )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT  
Civil Action No. 2013-CP-40-05888

RECEIVED

APR 14 2016

SC Court of Appeals

ORDER

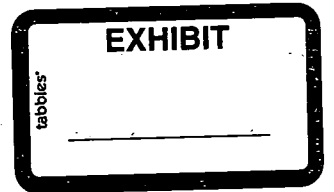
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

2016 FEB 17 PM 4:00

RICHLAND COUNTY  
FILED

This matter is before this Court by motion of the State of South Carolina ("State") seeking judgment on the pleadings. A hearing on the State's Motion was heard on September 10, 2014. The State was represented by T. Parkin Hunter and J. Emory Smith, Jr. of the South Carolina Attorney General's Office. The Plaintiff, Mr. Clarence Winfrey, was represented by Preston F. McDaniel of the McDaniel Law Firm. The insurance carrier, American Fire & Casualty Insurance Company c/o Liberty Mutual Group ("Carrier"), was represented by Brett H. Bayne of McAngus Goudelock & Courie, LLC. At the request of Plaintiff's counsel, another hearing was heard January 25, 2016, after a Form 4 issuing the Court's ruling was entered. This matter comes pursuant to the Declaratory Judgment Act. Plaintiff seeks to invalidate S.C. Code Ann. § 42-9-260 on the grounds that it is facially unconstitutional. Defendants sought to dismiss

*HW*



the Complaint and/or for a judgment on the pleadings based on several grounds including constitutional estoppel.

By way of background, Plaintiff has alleged he was injured in a work related accident on May 22, 2013. Following the May 22, 2013 accident, Carrier began paying weekly temporary disability benefits under the provisions of S.C. Code Ann. § 42-9-260(A) (1976, as amended) while conducting an investigation on the compensability of the claim. Section 42-9-260 expressly grants a defendant the right to pay these benefits without waiving any grounds for a good faith denial. Following the good faith investigation, Carrier denied Claimant's claim within 150 days on September 12, 2013, on the grounds that Claimant had failed to meet the burden of proof that he had sustained a compensable injury under the Workers' Compensation Act.—.

Following the denial of benefits, on September 18, 2013 Claimant filed a Form 15, Section III requesting a hearing pursuant to § 42-9-260(C) with the Workers' Compensation Commission. Then, On October 1, 2013, Claimant filed the underlying Summons and Complaint in Richland County Circuit Court, asking the court to declare that the statute under which he had received and accepted temporary disability benefits, and under which he had invoked his right to an expedited hearing, § 42-9-260, is unconstitutional. Claimant further accused Carrier of a bad faith denial of benefits, sought a temporary restraining order to stop Carrier from denying the claim, and sought an Order from Judge Lee finding the claim compensable and awarding benefits. On October 1, 2013, Judge Lee issued the temporary restraining order sought by Claimant related only to the denial and payment of benefits. Judge Lee conducted a hearing on the temporary restraining order on October 8, 2013. Judge Lee dismissed the temporary restraining order on October 9, 2013 based on a lack of jurisdiction to reinstate benefits. Carrier

reinstate benefits. Carrier timely filed an Answer and Counterclaim asserting nine defenses and a counterclaim for costs and fees.

After the temporary restraining order was rescinded, the Commission set Claimant's Form 15, Section III for a hearing before Commissioner Beck on November 11, 2013, to determine Claimant's entitlement to relief under § 42-9-260. Prior to the hearing, Commissioner Beck conducted a standard pre-hearing conference as well as a Motions Hearing wherein Commissioner Beck ruled on all outstanding issues raised by the motions. Following the hearing, Commissioner Beck issued a Decision and Order on December 5, 2013 finding that Carrier had conducted a good faith investigation prior to its denial of the claim for Claimant's failure to meet the requisite burden of proof, and, therefore, Claimant was not entitled to further relief under § 42-9-260. Thereafter, Claimant timely filed a Form 30, appealing the Decision and Order to the Full Commission in accordance with § 42-17-50. The Full Commission affirmed Commissioner Beck's Decision and Order with minor amendments, finding that Claimant was not entitled to further relief under § 42-9-260.

On October 22, 2013, after the hearing Claimant requested under § 42-9-260 was set by the Commission, Claimant filed a Form 50 requesting a hearing pursuant to § 42-17-20, asking the Commission to hold a full evidentiary hearing to determine compensability of Claimant's alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. This request for Hearing was made pursuant to Claimant's right to a request a hearing under § 42-17-20, which is separate and distinct from his right to request a hearing under § 42-9-260. A hearing notice for the Form 50 hearing was sent by the Commission on December 6, 2013 with explicit instructions that the hearing would be to determine compensability of Claimant's alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other

organs, members, and bodily parts. The Form 50 hearing was held before Commissioner Barden on January 13, 2014. Following the hearing, Commissioner Barden issued a Decision and Order on February 27, 2014. Carrier timely filed an appeal to the Full Commission pursuant to § 42-17-50 based on legal errors contained in Commissioner Barden's Decision and Order. The Full Commission affirmed Commissioner Barden's finding of compensability for the heart but reversed and denied compensability for the alleged brain and head injuries.

Subsequent to Commissioner Barden's hearing under § 42-17-20, Judge Cooper conducted a hearing on all outstanding motions filed in the declaratory judgment action on January 15, 2014. Judge Cooper issued a Form 4 Order on January 16, 2014 denying as premature Carrier's motion for fees, costs, and other relief related to the request for a declaratory judgment and granting Claimant's motion to dismiss Carrier's counterclaim related to the request for a declaratory judgment. Judge Cooper issued a second written Order on January 31, 2014 denying Carrier's 12(b)(7) Motion to Dismiss and ordering that the State of South Carolina (the "State") be added as a party pursuant to Rule 19 if Claimant wished to proceed to a determination of the constitutionality of S.C. Code Ann. § 42-9-260. Judge Cooper denied a subsequent Motion to Alter or Amend filed by Carrier pursuant to Rule 59(e).

Claimant filed an Amended Summons and Complaint with the Circuit Court on February 18, 2014 adding the State as a Defendant. Carrier filed an Answer and Counterclaim to the Amended Summons and Complaint on March 5, 2014. Carrier has raised nine defenses in its Amended Answer and Counterclaim including an assertion that it is an improper party and should be dismissed. The State filed its Answer asserting eight defenses and a Motion for Judgment on the Pleadings pursuant to Rule 12(c) on April 21, 2014. Additionally, Carrier has filed a Motion for Costs related to the original improper temporary restraining order.

Claimant has specifically alleged that "...the provisions of S.C. Code Ann. § 42-9-260...(A) violated the [Claimant's] right to due process of law...(B) that the provisions of §42-9-260 are in direct conflict with provisions of the Administrative Procedures Act concerning notice and hearing...and (C) denies the [Claimant] equal protection of the laws by creating an irrational classification..." Claimant has also stated "...pursuant to S.C. Code §42-9-260 the constitutionality of which is the basis of the Declaratory Judgment Relief requested." In addition, Claimant presented to the Circuit Court a signed Verification asserting that the allegations and issues raised in the Complaint are true, accurate, and with merit. Claimant also filed a Motion for a New Trial with the South Carolina Circuit Court asking for a "...preliminary or prima facie determination that [S.C. Code Ann. § 42-9-260] is unconstitutional..."

Claimant simultaneously requested a hearing before the Commission pursuant to S.C. Code Ann. § 42-9-260—the very statute he seeks to invalidate as unconstitutional in this Circuit Court case. On one hand Claimant has argued to the Circuit Court that S.C. Code Ann. § 42-9-260 is unconstitutional and on the other hand demands relief from the Commission under the same statute.

Constitutional Estoppel is a principle which holds that a party cannot avail himself of the provisions of a statute while also reversing his position and contending the law under which he sought to avail himself is invalid. Typically this issue arises when a party proceeds with an action, loses, and then asserts the law the party sought recovery under is unconstitutional. However, this principle is a two-way street, so to speak. Specifically, constitutional estoppel prevents a party from seeking the protections and/or benefits under the same statute the party asserts is unconstitutional. Because Claimant received multiple benefits under the statute—

including temporary benefits and a post-termination hearing—Claimant is estopped from challenging the constitutionality of 42-9-260.

It is an elementary fundamental rule of constitutional law that **one may not 'retain the benefits of the Act while attacking the constitutionality of one of its important conditions.'** Fahey v. Mallonee, 332 U.S. 245, 67 S.Ct. 1552, 91 L.Ed. 2030 (1947) citing United States v. City and County of San Francisco, 310 U.S. 16, 29, 60 S.Ct. 749, 756, 84 L.Ed. 1050 (1940). Additionally, the United States Supreme Court has long held that “[o]ne who invokes the provisions of law may not thereafter question its constitutionality.” Buck v. Kuykendall, 267 U.S. 307, 316, 45 S.Ct. 324, 326 (1925). These cases make it clear: a litigant cannot simultaneously obtain benefits under a statute while arguing the same statute it is unconstitutional. Because Claimant availed himself of the benefits of the Act, including 42-9-260, Claimant is not permitted to now challenge the constitutionality of 42-9-260.

The common law has long recognized the doctrine of constitutional estoppel, and has refused to allow litigants to challenge statutes under which they have voluntarily received benefits. Strickland v. Flue-Cured Tobacco Co-Op. Stabilization Corp. 643 F. Supp. 310 (D.S.C. 1986), *citing* U.S. v. City & County of San Francisco, 310 U.S. 16, 60 S.Ct. 749, 84 L.Ed. 1050 (1940); Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 466, 80 L.Ed. 688 (1936). *See also* Ross v. Lipscomb, 83 S.C. 136, 65 S.E. 451, 456 Am.St.Rep. 794 (1909) (“[a] party invoking the provisions of a statute is not in a position to raise the question of its constitutionality.”); Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc., 460 F. Supp. 549, 556 (D.S.C. 1979) (“one who utilizes an Act to gain advantages . . . is estopped from questioning the validity of its vital conditions.”)

6 *hmb*

Claimant voluntarily benefited under § 42-9-260(A) by accepting and depositing payments of weekly temporary disability which Carrier voluntarily paid to him pursuant to this statute. After Carrier invoked its right to terminate benefits pursuant to § 42-9-260(B)(3), Claimant invoked his right to an expedited hearing under § 42-9-260(C)<sup>1</sup>. Claimant received his expedited hearing pursuant § 42-9-260(C) on November 11th, 2013. This matter was ruled upon and the written Decision and Order of the Commissioner was served on December 5th, 2013. While Claimant was reaping all the benefits provided under § 42-9-260 before the Workers' Compensation, Claimant attempted to simultaneously ask the courts to declare unconstitutional the very statute from which he was benefitting.

Additionally, while Claimant alleges he has a property interest in benefits that are voluntarily paid by a private insurance company prior to any action by the Carrier in accordance with § 42-9-260(A), he is still subject to the language of that statute. The law clearly states that "an employer may start temporary disability payments immediately, and may continue those payments for up to 150 days." S.C. Code Ann. 42-9-260(A). Furthermore, the statute allows employers to "terminate or suspend the temporary disability benefits immediately at any time within the 150 days." S.C. Code Ann. 42-9-260(B). The employer had the right to terminate the temporary disability payments to Claimant after completing a good faith investigation and within the 150 days. This action was done in accordance with the statute.

Therefore, for the foregoing reasons, and based on the statute and the fact that Claimant benefitted from the statute he seeks to invalidate in this action, Carrier and the State are entitled to judgment on the merits and, therefore, judgment on the pleadings is rendered in favor of

---

<sup>1</sup> Generally, the Workers' Compensation Act does not prescribe a time limitation during which a Hearing must be held after a request is received. See § 42-3-180; § 42-17-20; § 42-17-40. The General Assembly granted certain petitioners the right to an expedited hearing that must be held no more than 60 days following the date of the request in the limited circumstances provided for under § 42-9-260(C) and § 42-9-260(D).

7 WB

Carrier and the State. Furthermore, this Court does not need to decide the declaratory judgment or any other issues regarding this matter because the constitutional estoppel issue is dispositive.

Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

**IT IS SO ORDERED.**



---

DeAndrea G. Benjamin  
Judge, Fifth Judicial Circuit

February 17, 2016