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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. 1322039

HARRY REESE, CLAIMANT/APPELLANT,

VERSUS

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH AND SC STATE
ACCIDENT FUND, DEFENDANTS/RESPONDENTS.

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

Appellate Panel Decision and Order filed:

April 8th, 2016

APPEARANCES:

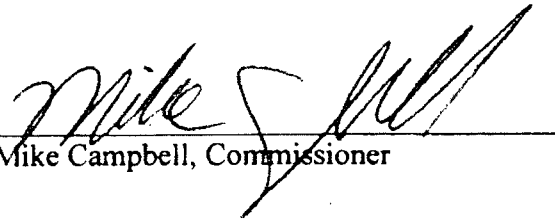
Claimant appeared *pro se*.

Defendants were represented by Page P. Snyder,
Esquire, of The South Carolina State Accident
Fund, P.O. Box 102100, Columbia, South Carolina
29221-5000

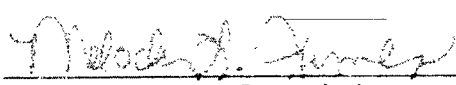
IT IS ORDERED, that the Claimant failed to prove that he suffered a compensable mental/mental claim pursuant to S.C. Code §42-1-160. Claimant failed to establish that he is entitled to compensation or benefits.

AND IT IS SO ORDERED.

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**



Mike Campbell, Commissioner



Melody L. James, Commissioner



Gene McCaskill, Commissioner, Chair

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 April 8, 2016

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSON

Harry Reese,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	
Department of Mental Health,	)	ORDER
	)	
Employer,	)	W.C.C. FILE NO.: 1322039
	)	
and,	)	
	)	
State Accident Fund,	)	
	)	
Carrier/Defendants,	)	
_____	)	

HEARING DATE: Held in Columbia, South Carolina on
April 6, 2015

APPEARANCES: Harry Reese, *Pro Se*
Page Snyder, Esq., Attorney for State Accident Fund.

PURPOSE OF HEARING: To determine the issues raised pursuant to forms 50 and 51.

DECISION AND ORDER BY: Susan Barden, Commission

FILED: July 24, 2015

STIPULATIONS

This case was heard by the undersigned Commissioner in Columbia, South Carolina, on April 6, 2015. The parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine whether the claimant suffered a compensable psychological injury while in the course and scope of his employment.
2. Notice of this hearing was timely and properly served upon all parties of interest.
3. Venue, set in Richland County, is proper as agreed by the parties.
2. Without objection, the Commission's file becomes part of the record, with the exception of any self-serving declarations or unstipulated medical reports.
3. The claimant seeks a determination that he suffered a compensable psychological injury while he was in the employment of the defendant/employer, Department of Mental Health. Therefore, the S.C. Workers' Compensation Commission has jurisdiction of this case.
4. The average weekly wage is \$701.61, making a compensation rate of \$467.76 applicable in this matter.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following documents were submitted into evidence by the Claimant:

Yellow Folder	Department of Mental Health Policies and Procedures
Small Binder (tabbed A-Z)	Articles re: stress and mental health
Large Binder (tabbed A-S)	Medical records, emails, employment documentation

Defendants objected to the Small Binder in its entirety. This objection was overruled and the Commissioner noted that while the articles were not evidence, she would take them under advisement. Defendants objected to any and all handwriting on documents in the Large Binder.

This objection was sustained and the undersigned noted that she did not weigh any of the handwritten information in the large binder.

Under the Administrative Procedures Act, the following documents were submitted into evidence by the Defendants:

APA A	Palmetto Behavioral Health Care	9/26/13-10/25/13	1-17
APA B	Donna W. Upchurch, Ph.D.	11/27/13-12/19/13	17-20
APA C	Carol Anderson, LISW	7/7/14	21

Defendants also offered Exhibits which included employment documentation from the Department of Mental Health which included write-ups, employee counseling records, and other documentation from Claimant's employment file. These documents range in dates from May 2010 through May 2014.

STATEMENT OF CASE

On September 15, 2014, Claimant filed a Form 50 requesting a hearing, filing a mental/mental claim. Claimant alleges dates of injury of October 18, 2013 and August 12, 2014. On September 18, 2014, a Form 12A was filled out by the Employer at the request of the Claimant, which reflected that Claimant was experiencing ongoing stress, slander, and false accusations by managers since April 1, 2010. The Defendants timely filed a Form 51 on October 10, 2014. Defendants denied the claim on the grounds that Claimant's allegations do not constitute a compensable mental/mental injury pursuant to S.C. Code § 42-1-160. This matter was set for a hearing on December 17, 2014. At the hearing, Claimant requested additional time to retain an attorney. Commissioner Melody James gave Claimant an additional thirty days to retain an attorney, and the matter was reset and heard on April 6, 2015. Claimant was not represented by counsel at the April 6, 2015 hearing. Claimant sought a determination that he suffered a compensable mental/mental injury pursuant to S.C. Code § 42-1-160. Defendants

argued that Claimant failed to meet his burden of proof to establish a compensable mental-mental injury.

EVIDENCE OF THE CASE

Claimant alleges he has sustained a compensable mental/mental claim while working at the Department of Mental Health pursuant to S.C. Code § 42-1-160. Claimant is a Human Resources Coordinator, and still employed with the Department of Mental Health. Claimant testified as to his alleged work injury, employment, educational background, and health background. Claimant relied upon his testimony and the admissible APA submissions.

Defendants relied upon medical records from Palmetto Behavioral Health Care which included treatment notes from September 2013 to October of 2013, records from Dr. Upchurch regarding Claimant's ability to work. Defendants called Claimant's former supervisor, Harold Edwards, to testify. Mr. Edwards was not Claimant's supervisor at the time of his alleged injuries, and his first-hand testimony was limited.

Claimant bears the burden of proving the compensability of his alleged work injury. Defendants maintain that Claimant failed to show that he suffered a compensable mental/mental injury pursuant to S.C. Code § 42-1-160.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. Claimant alleges that he sustained acute work-related mental-mental injuries on October 18, 2013, and August 12, 2014, but contends that work stressor symptoms have been occurring since 2010 (testimony of Claimant, Claimant's Deposition pages 13-14 and 51; Defendants' APA, pages 14 and 16; Claimant's APA B, page 28; Claimant's APA D, pages 87 and 102).

2. Claimant does not plead injury by repetitive trauma, but rather two discrete dates of injury (Commission's file containing Claimant's Form 50).
3. Claimant was earlier advised of his right to counsel, but instead chose to represent himself at the hearing before the undersigned (Order of Commissioner James, dated December 2014).
4. Claimant did not subpoena or otherwise bring any witness to the hearing to corroborate his testimony of harassment or hostility in the workplace. However, from Claimant's testimony, there is no question that Claimant and Ms. Marin did not see "eye to eye" (*See e.g.*, Claimant's APA F, pages 139, 141-168, 170, 173, 191-195, and 203; Claimant's APA L, page 426).
5. Claimant is 47 years of age (testimony of Claimant; Claimant's Deposition, page 5).
6. Claimant has a Master's degree in social work (testimony of Claimant; Claimant's Deposition page 8).
7. Claimant's employment history includes work as a cook, work at a Head Start facility as a case manager, and work as a teacher/coordinator at a child development center (Claimant's Deposition, pages 9-10).
8. Claimant's job with employer is a Human Resources Coordinator I/Mental Health Professional (testimony of Claimant; Claimant's Deposition, pages 10-11 and 56).
9. Based upon written evidence, Claimant appears to be an excellent employee who (a) cares very much about his job, and (b) takes great pride in the performance of that job. Claimant is documented as (a) requiring "minimal supervision and prompting in obtaining needed services for his clientele," (b) having "outstanding and consistent case management services," and being an "efficient" and "hardworking, caring, and

compassionate professional” (testimony of Claimant; Defendants APA, pages 1 and 3; Claimant’s submissions, unnumbered pages containing employee evaluations; Claimant’s Deposition, page 42; Claimant’s APA D, page 112; Claimant’s APA I, page 375).

10. Claimant was admitted to the Palmetto Health Behavioral Intensive Outpatient Program in September 2013 – the month prior to the October 2013 event he alleges to be an unusual and extraordinary condition of employment. During this treatment, Claimant reported “continuous conflict with his supervisors.” One of the goals mentioned during this treatment protocol was for Claimant “[t]o learn how to take better care of myself, so that I can deal with the job stress.” Claimant expressed anger at being accused of something he didn’t do at work and being treated unfairly. One of these records states that Claimant’s response to the “not uncommon” personnel issue is “uncommonly out of proportion to the situation, and the advocate will attempt to discover why the patient takes it so personally.” I give this evidence great weight (Defendants’ APA, pages 1-2, 11-14, and 16-17).
11. It is difficult to follow Claimant’s testimony at times, but it appears that the October 2013 incident relates to an investigation and Claimant’s ultimately being reprimanded for insubordination stemming from an alleged HIPAA violation, after which Claimant was made to take a HIPAA refresher course. The disciplinary documents specifically state that Employer considered the offense to have been without malicious intent. The tone of the disciplinary write-up does not appear to be extraordinary and unusual, and although Claimant adamantly disagrees with the write-up, it was not done in a hostile manner (testimony of Claimant; Claimants Deposition, e.g., pages 32-35 and

58; Defendants APA C, unnumbered pages; Claimant's APA, unnumbered pages; Claimants APA H, pages 277, 283-286, 288-295, 323, and 325-326; *See also* Claimant's APA L, page 422; Claimant's APA M, pages 433 and 436-445; Claimant's APA O, page 547).

12. It also appears that Claimant has particular difficulty with stress in dealing with his managers, particularly Ms. Marin, who supervised Claimant for a six month period in 2009-2010 (Ms. Marin's supervision ended in May 2010). However, Claimant alleges an incident in 2014 when Ms. Marin blocked a copy room and badgered him. Claimant contends that he is the subject of ongoing retaliation and harassment. Claimant testified at his deposition that he was warned by "the folk at Independence House," who told Claimant that Ms. Marin was "crazy." However, Claimant called no witnesses on his behalf to describe Ms. Marin in this manner. Otherwise, the outcome of this case might have been vastly different. However, in any event, Ms. Marin has not supervised Claimant since 2010 (testimony of Claimant; Claimant's Deposition, pages 36-41 and 57; Claimant's Deposition, page 15; Claimant's APA F pages 137 and 187).
13. Claimant also contends that he was investigated for various complaints without Employer following proper policy or protocol. However, in at least one of these complaints, Claimant was exonerated by Employer (testimony of Claimant; Defendants APA C, unnumbered pages; Claimant's Deposition, pages 19-21; Claimant's APA H, page 259).
14. Claimant admits that it is common for clients to allege mistreatment or abuse (Claimant's Deposition, page 47).

15. Claimant does admit to threatening clients by stating (jokingly, he contends) that he would throw water on those who did not pay attention. I do not find that the write-up for this episode was extraordinary and unusual (Defendants APA C; Claimant's Deposition, pages 16-17; testimony of Claimant; Claimants APA F, page 186).
16. As of the date of the hearing, Claimant has returned to his job duties with Employer (testimony of Claimant).
17. I have no doubt that Claimant's predominant stressor is work-related, as such is corroborated by the hospital outpatient treatment records, by the record of Dr. Upchurch, and by the causation statement by Dr. Kirkland. However, it is not enough for the stress to be work-related; if that were the case, Claimant would readily meet his burden of proof (*See* Claimant's APA, pages 31-32; Claimant's APA C, pages 54-56, and 78-80; Claimant's APA D, pages 82-83, 87-90, 92, 95 and 100).
18. Claimant has not provided to the Commission sufficient evidence to meet his burden of proof pursuant to S.C. Code § 42-1-160 for a mental-mental injury.
19. This decision is in no way a reflection upon Claimant's job performance with Employer, as Claimant strikes the undersigned as a very dedicated employee who not only cares deeply about his work, but also about what others think of that performance. Dr. Upchurch describes Claimant (a) with a "deep caring for the population he serves," and (b) as "desperate for understanding and respect." Claimant's write-ups "devastate" Claimant and leave him feeling as though he is "fighting for his good name and basic respect" (*See* Claimant's APA C, pages 79-80).
20. I did not consider any handwritten additions to records before me.

21. Benefits under the Act are denied. This decision has nothing to do with Claimant's job performance, as the greater weight of the evidence shows Claimant to be an excellent employee who takes great pride in the performance of his work for Employer.
22. Claimant's average weekly wage is \$701.61, yielding a compensation rate of \$467.76.

CONCLUSIONS OF LAW

Based upon the evidence submitted in the case, the testimony given, and the foregoing Findings of Fact, I make the following Conclusions of Law:

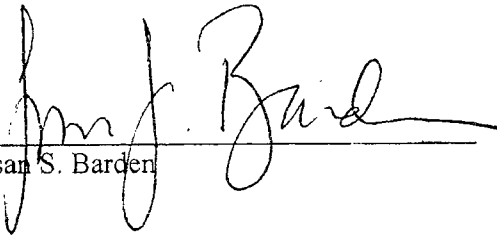
1. Pursuant to Section 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to Section 42-17-20.
2. Claimant is an employee and Department of Mental Health was the employer pursuant to S.C. Code §§ 42-1-130 and 42-1-140, respectively.
3. That pursuant to S. C. Code § 42-1-40, Claimant's average weekly wage was \$701.61, making a compensation rate of \$467.76 applicable in this matter.
4. Claimant asserts he suffered a compensable psychological injury while acting within the course and scope of her employment pursuant to S. C. Code §42-1-160. Claimant failed to meet the burden of proof to demonstrate a compensable mental-mental claim pursuant to § 42-1-160.

ORDER

Based upon the Findings of Fact and Conclusions of Law:

IT IS, THEREFORE, ORDERED, that Claimant failed to prove that he suffered a compensable mental/mental claim pursuant to S.C. Code §42-1-160. Claimant failed to establish that he is entitled to compensation or benefits.

AND IT IS SO ORDERED.



Susan S. Barden

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).
July 24, 2015

By: Kristi Love, Administrative Assistant to Commissioner Barden