

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION APPELLATE PANEL

Susan B. Barden, Commissioner
R. Michael Campbell, II, Commissioner
Aisha Taylor, Commissioner

W.C.C. File No. 1414843
Appellate Case No. 2016-000705

RECEIVED
AUG 12 2016
SC Court of Appeals

Elizabeth Priester, Employee Respondent,

v.

PruittHealth, Employer, and American Zurich Insurance Co., Carrier Appellants

BRIEF OF APPELLANTS

R. Daniel Addison
Lee E. Dixon
Hedrick Gardner Kincheloe & Garofalo, LLP
P.O. Box 11267
Columbia, SC 29211
Attorneys for Appellants

August 12, 2016

Table of Contents

TABLE OF AUTHORITIES..... ii

STATEMENT OF ISSUES ON APPEAL1

 WHETHER THE APPELLATE PANEL ERRED IN FINDING THAT FINDING THAT
 CLAIMANT HAD MET HER BURDEN TO ESTABLISH THE EXISTENCE OF A
 PSYCHOLOGICAL INJURY?.....1

STATEMENT OF THE CASE1

STANDARD OF REVIEW.....2

STATEMENT OF THE FACTS2

ARGUMENTS5

CONCLUSION.....9

TABLE OF AUTHORITIES

Cases

Anderson v. Baptist Med. Ctr., 343 S.C. 487, 493, 541 S.E.2d 526, 528 (2001).....6
Bass v. Kenco Grp., 366 S.C. 450, 465, 622 S.E.2d 577, 584 (Ct. App. 2005)6
Doe v. S. Carolina Dep’t of Disabilities & Special Needs, 377 S.C. 346, 660 S.E.2d 260 (2008).8
Doe v. S.C. Dep’t of Disabilities & Special Needs, 364 S.C. 411, 613 S.E.2d 785 (Ct. App. 2005)
.....8
Forrest v. A.S. Price Mech., 373 S.C. 303, 306, 644 S.E.2d 784, 785 (Ct. App. 2007).....2
Frame v. Resort Servs. Inc., 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct. App. 2004).....6
Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).....2
Sharpe v. Case Produce, Inc., 336 S.C. 154, 161, 519 S.E.2d 102, 106 (1999).....7
Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000).....2
Thompson v. S.C. Steel Erectors, 369 S.C. 606, 632 S.E.2d 874 (Ct. App. 2006)2

Statutes

S.C. Code §42-1-160(B).....6, 8, 9
S.C. Code Ann. §1-23-380(A)(5)2

STATEMENT OF ISSUES ON APPEAL

**WHETHER THE APPELLATE PANEL ERRED IN FINDING THAT
FINDING THAT CLAIMANT HAD MET HER BURDEN TO ESTABLISH
THE EXISTENCE OF A PSYCHOLOGICAL INJURY?**

STATEMENT OF THE CASE

This claim was originally heard before Commissioner T. Scott Beck (“Single Commissioner”) on August 20, 2015, in North Augusta, South Carolina on Claimant’s Form 50, *Employee’s Request for Hearing*. Elizabeth Priester (“Claimant”) alleged compensable injuries to her left wrist/arm, neck/back, left hip, and psychological as a result of a work-related accident that occurred on September 7, 2014. (R. p. 14) The purpose of the hearing was to determine whether Claimant was entitled to medical care for her alleged psychological injury. The employer and carrier (“Defendants”) denied that Claimant was entitled to this treatment under a “physical-mental” claim because there was no evidence of any physical injury as required by S.C. Code §42-1-160.

On September 30, 2015, the Single Commissioner issued an order finding, among other things, that Claimant had sustained a compensable bodily injury to her left wrist, low back and psyche and ordered Defendants to provide causally-related psychological treatment. (R. p. 1) Defendants timely filed a Form 30, *Application for Commission Review*, on October 12, 2015, assigning error to the Single Commissioner order on the basis that Single Commissioner erred in finding that Claimant had met her burden to establish the existence of a psychological injury. The Appellate Panel held a hearing on January 11, 2016 and, on February 29, 2016, issued an order affirming the order of the Single Commissioner in its entirety. (R. p. 8) Defendants timely filed their Notice of Appeal to the Court of Appeals on March 30, 2016.

STANDARD OF REVIEW

“The Administrative Procedures Act (“APA”) establishes the standard of review for decisions by the South Carolina Workers’ Compensation Commission.” Forrest v. A.S. Price Mech., 373 S.C. 303, 306, 644 S.E.2d 784, 785 (Ct. App. 2007) (citing Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981)). “In workers’ compensation cases, the [Appellate Panel] is the ultimate fact finder.” Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) (citation omitted). This court reviews facts based on the substantial evidence standard. Thompson v. S.C. Steel Erectors, 369 S.C. 606, 612, 632 S.E.2d 874, 877 (Ct. App. 2006). “Under the substantial evidence standard, the appellate court may not substitute its judgment for that of the [Appellate Panel] as to the weight of the evidence on questions of fact.” Forrest, 373 S.C. at 306, 644 S.E.2d at 785 (citing S.C. Code Ann. §1-23-380(A)(5)). The appellate court may reverse or modify the Appellate Panel’s decision only if the petitioner’s substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the record. Id. at 306, 644 S.E.2d at 785-86.

STATEMENT OF THE FACTS

Claimant’s contention in this case is that she sustained a compensable aggravation to the psyche, as a physical-mental injury, arising out of this claim. Defendants denied the compensability of the psyche in its entirety and asserted that this claim should be evaluated as a mental-mental claim since she had been released at maximum medical improvement (“MMI”) by the authorized treating physician (“ATP”) with no disability.

Claimant testified at the hearing that her accident occurred when she was cleaning up a resident who was a double amputee. After cleaning her up, Claimant turned the resident upward

on her side and moved to put soiled linens in the trash. When she turned around the resident said she was about to fall so Claimant rushed over to help her get back into the bed. (R. p. 29) Claimant testified the resident was very heavy and she hurt herself holding the patient up and repositioning her. (R. p. 31) Claimant admits that she had depression and anxiety in the 90's but testified that she got better with treatment. (R. pp. 31-32) At the hearing, Claimant testified that she felt she needed to see a counselor now to talk about her problem. (R. p. 32) Claimant stated that everything was different after her injury, the physical and mental things she was going through. Claimant testified that she has pain every day. (R. pp. 32-33) Claimant admits that she had problems with her back for which she had sought treatment prior to this accident and that she told her doctor at that time that she was having depression because of her back pain. (R. pp. 33-34)

After the work-related incident, Claimant received treatment from Doctors Care – North Aiken on September 10, 2014. According to the note, Claimant reported a fall on September 7, 2014 in which she wrenched her lower back and injured her wrists. (R. p. 168) She reported her wrists were feeling better but her lower back was still uncomfortable. A lumbar spine x-ray revealed spondylosis at the lumbosacral spine junction and moderate constipation. (R. p. 162) Claimant was released to light duty, given meds and ordered to do home exercises. She returned on September 17, 2014 with continued low back pain. (R. p. 159) Claimant was given additional work restrictions and exercises. Claimant returned for a follow up on September 24, 2014. (R. p. 151) The physician indicates that she continued to complain of low back pain following a very minor injury. Her notes reflect poor and non-specific answers to physician questions regarding activities that aggravate her pain. She is noted to have depressed mood and affect that was not appropriate. (R. p. 152) She was referred to physical therapy. On October 1, 2014, Claimant returned with reports of continued low back pain and new report of neck pain.

(R. p. 140) She was referred to an orthopedist and kept on light duty. On October 29, 2014, Claimant was written out of work until cleared by ortho. (R. p. 113)

Claimant was seen by Dr. Douglas Holford, Carolina Musculoskeletal Institute, on November 3, 2014. (R. p. 110) Dr. Holford notes that Claimant reports low back pain and right leg tingling and numbness. He ordered an MRI of the lumbar spine that was performed on November 11, 2014 and was found to be largely normal with only a very mild noncompressive annular protrusion at L4-5 with some diffuse hypertrophy. (R. p. 108) On November 17, 2014, Dr. Holford recommended home exercises and released Claimant to work. (R. p. 106) On December 10, 2014, Claimant reported continued low back pain as well as pain in her neck radiating into her arms. (R. p. 211) Dr. Holford ordered a cervical x-ray that showed some degenerative disc disease. He ordered a cervical MRI and noted the she should be able to do light duty work but that her depression was the problem with her not wanting to go back to work. He wrote her out of work until the MRI was completed.

The cervical MRI was conducted on December 23, 2014 and revealed degenerative disc disease at C5-6 and C6-7 with disc bulge and osteophytes. (Rp. P. 209) The diagnosis was noted as displacement of cervical intervertebral disc without myelopathy. Claimant returned to Dr. Holford on January 5, 2015 reporting continued neck pain and to review her MRI findings. (R. p. 207) He offered Claimant injections but she wanted to think it over. Claimant was released to work. On February 23, 2015, Dr. Holford again offered epidural injections to the cervical spine. (R. p. 205)

Claimant's attorney sent her for a psychological evaluation with Nicholas A. Lind, PsyD, on March 31, 2015. (R. pp. 96-99) In his report, Dr. Lind notes that Claimant reported receiving psychiatric treatment in the 1990's related to her divorce. Based on his examination, Dr. Lind diagnosed Claimant with Major Depressive Disorder and states that her anxiety and depression

were more likely than not aggravated by the pain and physical limitations resulting from her September 7, 2014 injury. Dr. Lind recommended continued mental health treatment with focus on treating her sleep issues first.

Upon the agreement of the parties that an additional evaluation was warranted and in the parties' best interests, Claimant was referred for an IME with Dr. Scott Boyd, Columbia Neurosurgical Associates on June 22, 2015. (R. pp. 199-200) Dr. Boyd notes that Claimant reports a lot of diffuse pain, focused mainly in her low back, as well as a lot of pain behavior that he could not explain based on her cervical and lumbar imaging. He indicates that he felt there was a strong psychiatric component to her pain. He notes that he could offer no surgical treatment or procedures as they would only likely make things worse. He indicates he could recommend pain management with a heavy emphasis on cognitive and psychiatric components of pain. In his Form 14B, *Physician's Statement*, dated August 19, 2015, Dr. Boyd assigned Claimant a 5% whole person impairment rating to the lumbar spine, and 5% to the cervical spine. (R. p. 450) In a questionnaire, Dr. Boyd states that it is his opinion that Claimant did not sustain a physical injury as a result of her September 7, 2014 accident, and that she is at MMI. (R. pp. 430-431)

ARGUMENTS

As set forth above, Claimant had an admitted incident on September 7, 2014. Since that event, Defendants provided all recommended treatment in order to determine what, if any, injuries Claimant may have sustained in the incident. As evidenced by the medical records in evidence, **none** of the treating physicians have identified any physical injury arising out of the September 7, 2014 incident. Despite the absence of any evidence of a physical injury, the Commission ordered Defendants to provide medical care for Claimant's psyche based on an alleged aggravation of a pre-existing condition. As set forth below, the Commission applied the

incorrect standard in reviewing the claim for a psychological injury and erred in ordering Defendants to provide this treatment.

Under the South Carolina Workers' Compensation Act:

Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence: (1) that the employee's employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual . . . and (2) the medical causation . . . by medical evidence.

S.C. Code §42-1-160(B) (emphasis added). Pursuant to this statute, “[m]ental injuries are compensable if they are induced either by physical injury or by unusual or extraordinary conditions of employment.” Anderson v. Baptist Med. Ctr., 343 S.C. 487, 493, 541 S.E.2d 526, 528 (2001). Mental injuries induced by physical injury are generally referred to as “physical-mental” claims. Bass v. Kenco Grp., 366 S.C. 450, 465, 622 S.E.2d 577, 584 (Ct. App. 2005) (“a mental injury induced by a physical injury is compensable.”). Mental injuries unaccompanied by physical injury are “mental-mental” claims and require medical evidence of unusual or extraordinary conditions causing the mental injury or illness. “A mental-mental injury is a purely mental injury resulting from emotional stimuli.” Frame v. Resort Servs. Inc., 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct. App. 2004). Thus, in the absence of unusual or extraordinary conditions, compensability for a mental illness or condition requires proof of a physical injury.

In this case, Claimant has failed to prove the existence of a physical injury arising out of the September 7, 2014 accident. The record reflects that an incident was reported by Claimant and admitted by Defendants. Following that reported incident, Defendants provided appropriate referrals to allow the authorized treating physicians to evaluate and diagnose what, if any, physical injuries Claimant sustained arising out of that incident. As evidenced by the records of

Dr. Holford and Dr. Boyd, no actual physical injury has ever been identified or diagnosed as being causally-related to the work-related incident. The evidence reflects Claimant's ongoing and persistent subjective reports of diffuse pain, without any evidence of its etiology or relation to the work-place incident. Dr. Boyd specifically stated that he found **no evidence of a physical injury**. (R. pp. 430-431) The Commission, however, appears to have relied on the fact that Dr. Boyd did assign an impairment rating to Claimant's spine. In doing so, the Commission overlooked the unequivocal and direct statement of Dr. Boyd that Claimant did not sustain a **physical injury** arising out of her work-related accident. (*Id.*) While the AMA Guidelines contemplate that a physician may assign an impairment rating based solely on subjective pain symptoms without any evidence of physical injury, nowhere in the his records did Dr. Boyd state to any reasonable degree of medical certainty that the pain symptoms he was providing a rating for were causally-related or arose out of Claimant's employment. In apparently relying on that impairment rating to find the psyche injury compensable, the Commission's findings were speculative and not at all consistent with the specific statement of Dr. Boyd that he found no **"physical injury as a result of the September 7, 2014 work-related accident."**

The only other evidence in the record that Claimant produced to establish a causal link in this case is the report of Dr. Lind, based on his one-time evaluation of her. In his report, Dr. Lind concludes, based on the subjective reports of Claimant, that she suffered an aggravation of her pre-existing mental illness. (R. p. 98) This report and the opinions it contains are not conclusive or binding. *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 161, 519 S.E.2d 102, 106 (1999)("where uncontroverted medical opinions are merely deductions drawn from certain symptoms, the final conclusion remains with the triers of fact.") Claimant's medical records demonstrate a long history of diffuse neck and back pain, as well as depression. In the absence

of any credible medical evidence of an actual physical injury, any aggravation to her psyche simply is not compensable under S.C. Code §42-1-160(B).

The facts of this case are similar to those presented in Doe v. S.C. Dep't of Disabilities & Special Needs, 364 S.C. 411, 613 S.E.2d 785 (Ct. App. 2005) rev'd on other grounds by Doe v. S. Carolina Dep't of Disabilities & Special Needs, 377 S.C. 346, 660 S.E.2d 260 (2008). In Doe, the claimant was kicked in the abdomen by a patient and sought medical treatment. A couple of months later, she began to complain of being depressed and having "crying spells." She was diagnosed with depression. After returning to work, she had another accident in which a patient pushed a cart into her, causing a sprain to her left arm and knee. Claimant sought benefits for her two physical injuries and her depression. The single commissioner found the mental injury was not compensable as either the result of unusual or extraordinary circumstances or caused by her physical injury. On appeal, the Circuit Court reversed this decision. In reversing the Circuit Court, the Court of Appeals stated, "there is substantial evidence in the record supporting the Full Commission's determination that the mental injury was not induced or caused by the minor physical injuries Claimant sustained." Doe, 364 S.C. at 421, 613 S.E.2d at 790.

In this case, while Defendants do not dispute the reported incident as alleged by Claimant, they do dispute that there is substantial evidence in the record that this incident caused any physical injury. Dr. Boyd has explicitly stated that there is no evidence of a physical injury and that Claimant is at MMI. Similar to the Doe case, the record does not support any finding that Claimant's mental condition was induced, caused by or aggravated by the relatively minor incident involved here.¹ In the absence of a physical injury, S.C. Code §42-1-160(B) precludes

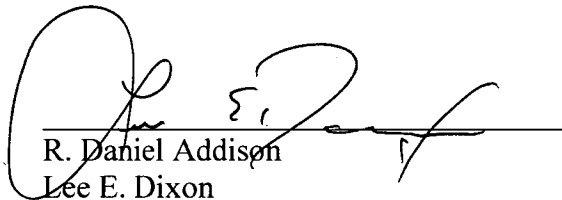
¹ In fact, the depression and mood affect noted by her physicians only 3 days after the incident were entirely consistent with her pre-injury medical records and testimony of her prior issues.

the Commission from finding any mental injury to be compensable unless it has been established by medical evidence to have been the result of or aggravated by unusual or extraordinary work conditions. There is no such evidence in the record.

Conclusion

The substantial evidence in this case demonstrates that Claimant has not met her burden in proving the existence of a physical injury as required by S.C. Code §42-1-160(B) for a finding of a compensable mental or psychological injury. Having failed to meet this burden, her claim for medical care to her psyche must be denied and the decision of the Appellate Panel reversed.

Respectfully submitted,



A handwritten signature in black ink, appearing to be "R. Daniel Addison" and "Lee E. Dixon", is written over a horizontal line. The signature is stylized and cursive.

R. Daniel Addison
Lee E. Dixon
Hedrick Gardner Kincheloe & Garofalo, LLP
Post Office Box 11267
Columbia, South Carolina 29211
Attorneys for Appellants

August 12, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION APPELLATE PANEL

Susan B. Barden, Commissioner
R. Michael Campbell, II, Commissioner
Aisha Taylor, Commissioner

W.C.C. File No. 1414843
Appellate Case No. 2016-000705

RECEIVED
AUG 12 2016
SC Court of Appeals

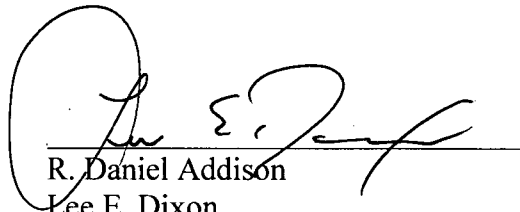
Elizabeth Priester, Employee Respondent,

v.

PruittHealth, Employer, and American Zurich Insurance Co., Carrier Appellants

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Brief of Appellants complies with the provisions of SCACR, Rule 211(b).



R. Daniel Addison
Lee E. Dixon
Hedrick Gardner Kincheloe & Garofalo, LLP
P.O. Box 11267
Columbia, SC 29211
Attorneys for Appellants

August 12, 2016