

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

Jose Juan Jimenez, Employee,.....Appellant,

v.

Kohler Company, Self-Insured Employer,.....Respondent.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

I. Jose Jimenez suffered two compensable injuries by accident per 42-1-160 and is entitled to benefits in accordance with the Workers' Compensation Act.

Respondent argues the Order correctly held Appellant failed to establish compensable injuries by accident per S.C. Code Ann. §42-1-160, because the evidence did not establish a causal-relationship between his accidents and his current problems. This is not an accurate statement of the law or the Order's holding.

Appellant felt a pull in his back while emptying drain pans on July 14, 2011. He reported the accident to his supervisor at 5:00am on July 15, 2011. His supervisor completed an incident report and referred him to the plant nurse. He was seen by the plant nurse on July 15, 2011 and she rendered medical care by applying Biofreeze to his low back and providing him Backquell tablets. (R. p. 476, p. 174).

On March 13, 2012, Appellant again hurt his back rolling over molds. He asked his supervisor for back pills. His supervisor provided him back pills that day. The next morning he complained of worsening pain in his back and left leg. His supervisor completed an incident report and sent him to the plant nurse. The plant nurse rendered medical care on March 14, 2012 by applying Biofreeze and giving him medication. (R. p. 475; p. 402, lines 14-15; p. 173).

These facts establish that Appellant suffered two compensable injuries by accident, per S.C. Code Ann. §42-1-160. Nothing occurring or failing to occur later is capable of altering this fact. Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E. 2d 753, 758 (Ct. App. 2007).

Respondent's argument that it never disputed Appellant provided notice of his accidents, and that its Notice defense was "raised based upon the allegation that an injury occurred any other

day for which the claimant did not give notice” (Respondent’s Brief p. 17, second paragraph and footnote 6), is a blatant misrepresentation of the facts. In fact, Respondent’s Forms 51, Form 58, and comments at the Hearing confirm it repeatedly disputed Notice specifically related to both accidents. (R. p. 45, item 5; p. 46, item 11; p. 49, item 5; p. 50, item 11; pp. 181-182, items 4 and 5; p. 326, lines 19-25; p. 327, lines 1-20; p. 587, lines 15-22; p. 641, lines 22-25; p. 642, lines 1-25; p. 643, lines 1-14).

Appellant’s Brief referenced a hypothetical clerk who tripped and fell injuring her knee at work on January 1st. (Appellant’s Brief pp. 32-33). She reported the injury to her supervisor the following day. She was sent to Human Resources where she was provided an Ibuprofen. At that time, she told her HR manager “I think I’ll be alright.” Six months later she returned to the HR manager complaining that her knee injured in the January 1st accident was bothering her. The clerk suffered a “compensable injury by accident” as that term is defined by 42-1-160 and the case law interpreting that statute. The clerk’s trip and fall “arose out of and in the course of her employment” at the time it occurred. Appellant’s Brief noted, the clerk’s employer could dispute whether the clerk’s current knee complaints were causally-related to the compensable injury by accident she suffered six months earlier. However, the fact that she suffered a compensable injury by accident was no longer in dispute. That fact was already established once and for all.

Respondent’s Brief does not refute this accurate statement of the law. Instead, Respondent misstates Appellant’s argument and then attempts to refute its misstated version. Respondent’s Brief provides:

Contrary to the claimant’s argument, it is not indisputable that the clerk’s current complaints constitute a “compensable injury by accident”...

(Respondent’s Brief p. 30).

Appellant never made such an argument. Rather, Appellant stated it is indisputable that the clerk suffered a compensable injury by accident on January 1st. Whether the clerk's current complaints are causally-related to the January 1st compensable injury by accident remain subject to dispute by her employer. Regardless of whether her employer disputes the causal relationship, the fact will remain that she suffered a compensable injury by accident on January 1st.

Likewise, Appellant herein suffered compensable injuries by accident on July 14, 2011 and March 13, 2012. The Order holding Appellant did not suffer any compensable injuries by accident per §42-1-160 is wrong. (R. p. 37). The question that the Commission failed to reach was: whether his current complaints requiring medical treatment are causally-related to his compensable injuries by accident?

- A. The Commission failed to address whether Mr. Jimenez's current problems were causally-related to his compensable injuries by accident.

As Appellant's Brief addressed, a compensable injury by accident can be established without reaching the issue of causation between said accident and a claimant's physical complaints that develop later. Anderson v. Campbell Tile Co., 202 S.C. 54, 24 S.E.2d 104 (1943); Lawson v. Hanson Brick America, Inc., 393 S.C. 87, 710 S.E.2d 711 (Ct. App. 2011); and Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 at 300 (2012). After a compensable injury by accident occurs, it remains incumbent upon a claimant to establish any later developing physical problems are causally-related to the original injury by accident. Appellant has never disputed this proposition.

The legal errors on appeal involve the Commission's: 1) incorrectly holding no compensable injury by accident occurred; 2) failing to reach the issue of a causal relationship

between Appellant's compensable injuries by accident and current physical problems; and, 3) inadequate and conclusory findings contained in the Order. First, the Commission had to find compensable injuries by accident occurred, in order to determine whether those injuries by accident were causally-related to Appellant's current problems. Despite Respondents claims to the contrary, Finding 9 of the Order did not reach the issue of a causal relationship between Appellant's current complaints and his compensable injuries by accident.

Finding 9 provided:

We find that Claimant reported "incidents" following each alleged date of injury, however, we specifically find the claimant has failed to carry his burden of proving his current problems are causally-related to these reported "incidents". This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for numerous months following each alleged date of injury. This finding is based upon the greater weight of the evidence in the record.

(R. p. 36).

The Commission's use of quoted "incidents" and the phrase "alleged dates of injury" reflect it did not reach the determination that compensable injuries by accident had occurred. This was further borne out by Finding 13 reflecting "claimant has failed to carry his burden of proving a compensable injury by accident . . . on either alleged dates of injury." (R. p. 36).

Respondent attempts to defend the Commission's error by arguing that Appellant suffered an injury by accident, but it was not a compensable claim. (Respondent's Brief, p. 26). As Appellant's Brief noted, a compensable injury by accident is defined in Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 75, 758 (Ct. App. 2007). A "compensable injury by accident" is the relevant issue. The evidence established a compensable injury by accident occurred. Whether

Appellant's compensable injuries by accident entitle him to benefits for his current problems is a question that was not addressed by the Order.

Page 30-31 of Respondent's Brief shows the lengths to which Respondent is willing to torture logic in an attempt to support the Commission's faulty Order. Respondent appears to finally concede that a compensable injury by accident occurred, but argues compensability "resolved with his aches unless or until the claimant suffered some additional complaint requiring medical care or producing a disability . . ." and "[t]he claimant's 'injury by accident' that he suffered on the two days in question simply is not compensable beyond that unless or until the claimant seeks more medical care or misses work . . ." This is an unsupported, incorrect statement of South Carolina Workers' Compensation Law. Respondent is in effect arguing compensability of an injury can be altered by events occurring after the fact. This is untrue, assuming Respondent cannot successfully alter the space-time continuum enunciated in Dr. Einstein's Theory of Special Relativity referenced in its Brief. (Respondent's Brief p. 25, footnote 8).

B. The Commission provided inadequate and conclusory Findings and Conclusions.

Finally, Respondent argues Appellant failed to raise the issue of inadequate and conclusory findings before the Full Commission. However, the inadequate and conclusory findings that Appellant complains of, did not exist at that time. The findings Appellant complains of were created by the Full Commission when it modified the Hearing Order and therefore could not have been raised earlier.

Alternatively, Respondent argues that the findings and conclusions were adequately supported by the preceding twenty-one pages of facts contained in the Hearing Order. (Respondent's Brief, p. 41). However, none of these twenty-one pages are contained in the Order

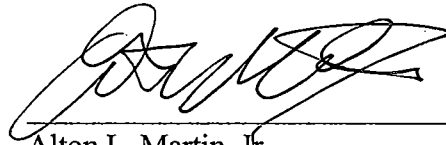
on appeal. (R. pp. 30-37). Respondent's claim that "these twenty-one pages of facts were adopted by, and affirmed by, the Appellate Panel in its Decision and Order" is not given a transcript reference and is not reflected in the Appellate Panel's Order. (R. pp. 30-37). Moreover, the Appellate Panel modified the Findings and Conclusions that were allegedly supported by these twenty-one pages contained in the Hearing Order, doing so without providing any reasons for its modification. (R. pp. 35-37) .

Appellant relies upon its arguments previously provided on pages 37-43 of Appellant's Brief regarding the inadequacy and conclusory nature of the disputed findings and conclusions in the Appellate Panel's Order.

CONCLUSION

For the foregoing reasons, the Decision of the Appellate Panel should be Reversed. Mr. Jimenez suffered "injuries by accident" to his low back and left leg per S.C. Code Ann. §42-1-160. Respondents should provide medical treatment in accordance with the Act and pay temporary benefits until Claimant has reached MMI or been released to return to work without restrictions. Alternatively, the Court should Reverse and Remand for findings consistent with the evidence that Mr. Jimenez suffered a "compensable injury by accident"; and, findings that provide sufficient specificity to allow for appellate review should any subsequent appeal arise.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alton L. Martin, Jr.', written over a horizontal line.

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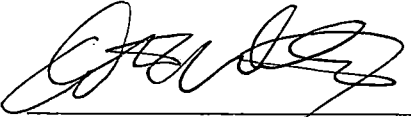
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with
Rule 211 (b), SCARC



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SC Court of Appeals

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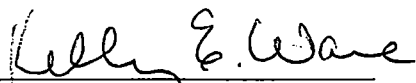
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PROOF OF SERVICE

I, certify that I, Kelly E. Ware, paralegal to Alton L. Martin, Jr., and that I have caused the **Final Brief of Appellant** and **Final Reply Brief of Appellant** to be served upon counsel for the Respondents by mailing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below, addressed as follows:

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