

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE S.C. WORKERS' COMPENSATION APPELLATE PANEL

W.C.C. FILE NO. 1322039

APPELLATE CASE NO. 2016-000997

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SEP 26 2016

SC Court of Appeals

HARRY REESE.....Appellant,

vs.

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH and SC STATE ACCIDENT
FUND,Respondents.

INITIAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

Table of Authorities.....3
Statement of Issue on Appeal.....4
Statement of the Case.....5
Question Presented.....6
Standard of Review.....7
Argument7

DOES THE RECORD ON APPEAL SUPPORT THE APPELLATE PANEL'S
DETERMINATION THAT THE APPELLANT FAILED TO ESTABLISH A
MENTAL INJURY PURSUANT TO S.C. CODE § 42-1-160(B)?

Conclusion.....10

TABLE OF AUTHORITIES

CASES

Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d 304, 307 (1981).....7

Pollack v. Southern Wine & Spirits of America, 747 S.E.2d 430, 405 S.C. 9 (2013)....7

Thompson v. South Carolina Steel Erectors, 369 S.C. 606, 632 S.E.2d 874
(S.C. Ct. App. 2006).....7

STATUTES

S.C. Code Ann. § 42-1-160 (1976, as amended).....5, 7, 8, 9, 10

S.C. Code Ann. § 42-15-40 (1976, as amended).....9

S.C. Code Ann. § 42-17-50 (1976, as amended).....5

STATEMENT OF ISSUE ON APPEAL

IS THERE EVIDENCE IN THE RECORD TO SUPPORT WORKERS' COMPENSATION COMMISSIONER'S FINDING THAT THE APPELLANT DID NOT MEET HIS BURDEN OF PROOF TO ESTABLISH A COMPENSABLE WORKERS' COMPENSATION CLAIM PURSUANT TO S.C. CODE § 42-1-160(B)?

STATEMENT OF THE CASE

On September 15, 2014, Appellant filed a Form 50 requesting a hearing, alleging an injury pursuant to S.C. Code § 42-1-160(B). On his Form 50, Appellant alleged dates of injury of October 18, 2013 and August 12, 2014. On September 18, 2014, respondent/employer completed a Form 12A, First Report of Injury, at the request of the Appellant which reflected that Appellant was experiencing ongoing stress, slander and false accusations by managers since April 1, 2010. Respondents timely filed a Form 51 on October 10, 2014, denying the claim on the grounds that Appellant's allegations do not constitute a compensable mental/mental injury pursuant to S.C. Code § 42-1-160(B). This matter was set for a hearing on December 17, 2014. At the hearing, Appellant requested additional time to retain an attorney. Commissioner Melody James gave Appellant an additional thirty days to retain an attorney and the matter was reset and heard April 6, 2015 by Commissioner Susan Barden. Appellant appeared pro se at the April 6, 2015 hearing. Appellant sought a determination that he suffered a compensable mental/mental injury pursuant to S.C. Code § 42-1-160(B). Respondents argued that Appellant failed to meet his burden of proof to establish a compensable mental/mental injury.

The single commissioner issued a request for a proposed order which was received by the Respondents on April 13, 2015. The single commissioner found that the Appellant had not met his burden to prove a compensable injury under S.C. Code § 42-1-160(B). The Decision and Order was signed by the single commissioner on July 24, 2015. Respondents received a copy of the Order on July 29, 2015. South Carolina Code § 42-17-50, requires the Appellant to file an application for review "within fourteen days from the date when notice of the award shall have been given." On August 4, 2015, Appellant inquired with the S.C. Workers' Compensation Commission ("the Commission") via email as to the process to file an appeal.

On August 19, 2015, Appellant was informed by the S. C. Workers' Compensation Commission that the appeal date had passed. She advised claimant that he could file a Motion to Reinstate Appeal. Appellant filed a Motion to Reinstate Appeal on August 19, 2015. This Motion was granted on September 2, 2015. A notice of the full commission hearing was served on the parties on October 12, 2015. This notice specifically provided that the Appellant's brief was due on November 11, 2015.

On November 11, 2015, the Appellant emailed Amy Bracy at the Commission, inquiring how to upload his brief. A week passed and the Appellant did not submit a brief. The Appellant requested an extension until November 23, 2016 to submit his brief via electronic mail. The parties were informed via email on November 19, 2015 that the extension to submit a brief was granted.¹ The claimant submitted a sixty-two page document on November 23, 2015. Claimant submitted subsequent briefs to the defendants via email on December 4, 2015 and December 6, 2015.

The Appellate Panel of the South Carolina Workers' Compensation Commission heard oral arguments on December 14, 2015. In its April 8, 2016 Order and Decision the Appellate Panel fully affirmed the Order and Decision of the single commissioner, finding that the Appellant did not meet his burden of proof. The Appellant filed an appeal to this court on April 28, 2016. The Appellant filed his brief on July 15, 2016.

QUESTION PRESENTED

The Appellant's Initial Brief makes allegations of violations of civil rights and due process, as well as general objections to the single commissioner and Appellate Panel Orders and Decisions. The Appellant also outlines the relief sought at the end of the brief. The Respondents

¹ This matter is governed by S.C. Regs. 67-705. Subsection H states that the time for filing a brief may be granted with the consent of the opposing party. The defendants never consented to an extension of the claimant's brief as required by the regulation. Pursuant to S.C. Regs. 67-705(H)(3), this appeal should have been dismissed.

submit that the question presented is whether the record supports the single commissioner's finding that the Appellant failed to establish a mental injury under to §42-1-160(B).

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act establishes the standard of review for decisions by the South Carolina Workers' Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-35, 276 S.E.2d 304, 307 (1981). "Under the Administrative Procedures Act (APA), an appellate court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but it may reverse when the decision is affected by an error of law." *Pollack v. Southern Wine & Spirits of America*, 747 S.E.2d 430, 405 S.C. 9 (2013) citing S.C. Code Ann § 1-23-380(5) (Supp. 2012). As to issues of fact, under the substantial evidence rule, an appellate panel may not substitute its judgment for that of the Workers' Compensation Commission as to the weight of the evidence or questions of fact. *Thompson v. South Carolina Steel Erectors*, 369 S.C. 606, 632 S.E.2d 874 (S.C. Ct App. 2006). Our Supreme Court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981).

ARGUMENT

DOES THE RECORD ON APPEAL SUPPORT THE APPELLATE PANEL'S DETERMINATION THAT THE APPELLANT FAILED TO ESTABLISH A MENTAL INJURY PURSUANT TO S.C. CODE § 42-1-160(B)?

The Respondents contend that the Appellate Panel properly determined that the Appellant failed to establish a mental injury pursuant to §42-1-160(B). South Carolina Code §42-1-160(B) contains a two part requirement for a compensable mental injury unaccompanied by physical

injury. Part one (1) requires “that the employee’s employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment.” Part two (2) requires medical causation between the stress or mental injury and the stressful employment conditions by medical evidence. The records submitted by the Respondents establish a causal connection between the stress and the Appellants’s employment, and the single commissioner made such a finding, however Respondents request this court to affirm the Appellate Panel’s determination that the Appellant failed establish the requirements of subsection one (1).

Respondents rely upon the statement of Charles Roundy at Palmetto Behavioral Health on October 9, 2013. (Defendants’ APA A, p. 17) This note discusses the Appellant’s reports of job-related stress and specifically states, “[h]is response to this not uncommon peronnel [sic] issue is uncommonly out of proportion to the situation, and the advocate will attempt to discover why the patient takes it so personally.” (*Id.*) Respondents contend that this statement shows that claimant’s work conditions were not extraordinary and unusual.

Further, Appellant’s allegations involve personnel issues, disciplinary actions and whether or not the employer follows its own policies. The single commissioner attempted to parse through the Appellant’s complaints and made specific findings as to some of the personnel issues mentioned. One write-up from October 2013 dealt with an alleged HIPAA violation. (Finding of Fact ¶ 11) The single commissioner noted that the disciplinary documents note that the offense to have been committed without malicious intent. The single commissioner found that the write up was not extraordinary and unusual. (*Id.*) Respondents contend that the specificity of the single commissioner’s findings indicate that the single commissioner thoroughly reviewed the evidence submitted.

As to Appellant's complaints of his former supervisor, Maria Marin, the single commissioner notes that he brought no witnesses to corroborate any extraordinary or unusual conditions regarding this former supervisor and that the former supervisor had not supervised the claimant since 2010. (Finding of Fact ¶ 12) Respondents argue that any actions that took place in 2010 are barred from adjudication by the Commission pursuant to S.C. Code Ann. § 42-15-40.

Appellant alleges mental injury resulting from investigations into various complaints over personnel issues. South Carolina Code §42-1-160(C) states specifically,

mental injuries ... are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, ... except when these actions are taken in an extraordinary and unusual manner.

The single commissioner reviewed the voluminous evidence and the lengthy testimony and determined that personnel issues were not handled in an extraordinary or unusual manner.

(Findings of Fact ¶¶ 11, 15, 18)

In regard to the remaining arguments contained in Appellant's Initial Brief, Respondents shall attempt to respond to these succinctly. Argument 1 appears to allege an error by Respondents and the single commissioner in informing the Appellant of the appeals process. Respondents contend that they were under no obligation to help the Appellant with his appeal and it would be improper for any member of the South Carolina Workers' Compensation Commission to advise the Appellant in formulating his appeal. Argument 2 alleges that the single commissioner did not review the policies and directives that govern the South Carolina Department of Mental Health. There is nothing from the single commissioner's Order and Decision to indicate that she did not review the policy information submitted by the Appellant. Additionally, a violation of agency policy is not within the jurisdiction of the South Carolina

Worker's Compensation Commission as it does not fall within Title 42 of the South Carolina Code of Laws. Appellant's Arguments 3 through 6 are addressed above and the Respondents reiterate that the decision of the single commissioner is supported by the evidence in the record and was fully affirmed by the Appellate Panel.

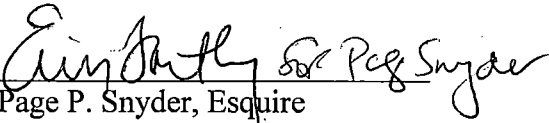
Appellant alleges due process and constitutional violations in Argument 7. The record reflects that all parties were given proper notice of the hearing and the Appellant was given the opportunity to call witnesses and present evidence to the single commissioner. The record further reflects that the Appellant did not request the single commissioner to recuse herself from hearing this matter. As to Arguments 8, 9 and 10, Respondents contend that the decision of the single commissioner, affirmed by the Appellate Panel, is fully supported by the evidence in the record.

CONCLUSION

The Appellate Panel did not err in determining that the Appellant failed to meet his burden of proof for benefits under S.C. Code § 42-1-160(B) because Appellant did not establish that the conditions causing the mental injury were unusual and extraordinary in comparison to the normal conditions of his employment.

For the reasons set forth above, the defendants respectfully request that the Full Commission affirm the Appellate Panel's Order and Decision in its entirety.

Respectfully Submitted,



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Attorney for the Respondents

Columbia, South Carolina
September 23, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE S.C. WORKERS' COMPENSATION APPELLATE PANEL

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HARRY REESE.....Appellant, **SC Court of Appeals**

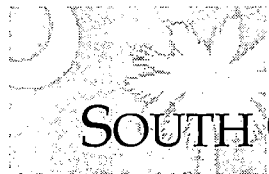
vs.

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH and SC STATE ACCIDENT
FUND,Respondents.

PROOF OF SERVICE

I certify that I have served the Respondents' Initial Brief on Appellant on September 23, 2016 by depositing a copy of it in the United States Mail, postage prepaid, to 8408 Little John Drive, Columbia, South Carolina 29209.

BY: *Ann Jentley for Page Snyder*
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STATE ACCIDENT FUND

HARRY B. GREGORY, JR., Director

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September 23, 2016

SEP 26 2016

SC Court of Appeals

VIA US MAIL

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

**RE: Harry Reese, Appellant v. South Carolina Department of Mental Health and The State Accident Fund, Respondents.
Workers' Compensation File No. 1322039
Appellant Case No.: 2016-000997**

Dear Ms. Kitchings:

Pursuant to your September 21, 2016 letter in the above-referenced matter, we are hereby re-submitting the amended pleadings which include correct appellate case and workers' compensation file numbers.

Enclosed please find for filing the original and two (2) copies of the Initial Brief of Respondents and the original Proof of Service. I would appreciate you returning the clocked-in copies to me in the self-addressed stamped envelope provide.

By copy of this letter, I am serving Harry Reese, Pro-Se Appellant with a copy of the same.

Sincerely,

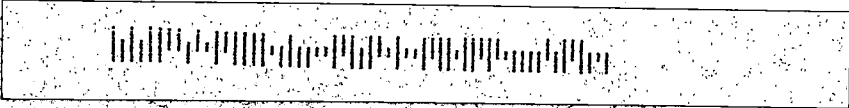
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PPS/bjt
Enclosures
cc: Harry Reese



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