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SC Court of Appeals

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1507064

RONALD P. COLLINS,

EMPLOYEE,
APPELLANT/CLAIMANT,

vs.

SIGN CRAFTERS USA,

EMPLOYER,

AND

ACCIDENT FUND NATIONAL INSURANCE COMPANY,

CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina, on August 16, 2016 per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed October 14th, 2016.

APPEARANCES:

Appellant/Claimant, Ronald P. Collins, represented by R. Scott Dover, Esquire, Pickens, South Carolina.

Defendants/Respondents represented by Jason A. Griggs, Esquire of Willson Jones Carter & Baxley, P.A. in Greenville, South Carolina.

STATEMENT OF THE CASE

This claim was heard by Commissioner Gene McCaskill, on January 7, 2016, in Greenville, South Carolina. On May 18, 2016, Commissioner McCaskill issued the following Order:

IT IS, HEREBY, ORDERED that Claimant failed to meet his burden of proving that he sustained a compensable injury by accident and is not entitled to any compensation or medical treatment for his alleged right shoulder injury. Therefore, Claimant's workers' compensation claim is dismissed with prejudice.

IT IS SO ORDERED.

In his Decision and Order, dated May 18, 2016, Commissioner McCaskill made the following specific Findings of Fact and Conclusions of Law:

Findings of Fact

The following are found as facts:

1. Claimant alleged that he sustained an injury by accident to his right upper extremity and right shoulder on May 29, 2015.
2. Claimant sought a finding of compensability as well as payment for the treatment he had received at Pelham Medical Center, Piedmont Orthopedics, St. Francis Hospital, and St. Francis Therapy Center. He also sought the continuation of medical care, treatment, and TTD from May 30, 2015 to present and continuing.
3. Defendants denied the claim with the position that no compensable injury occurred. The burden of compensability rests solely with Claimant.
4. Claimant assisted in a sign installation on May 29, 2015. He asserted that he was injured while installing said sign. During his deposition, Claimant testified that he was knocked off of a ladder while installing the sign and hung onto the sign with one hand for "about a minute". (Claimant's Deposition p. 47 at line 14.) While

describing the alleged accident at the hearing, Claimant's version of events changed drastically. Upon questioning by his attorney, Claimant stated, "I'm not sure whether my feet left the ladder or not." (Hr. Tr. p. 17 at lines 11-12.) Claimant also testified, "I do know that my feet may or may not have left the ladder. One of them may have stayed on the ladder, but it sure felt like I left the ladder." (Hr. Tr. p. 19 at lines 8-10.) However, upon cross-examination, Claimant testified, "I'm not sure one of my foot come off." (Hr. Tr. p. 33 at line 2.) Claimant's description of the alleged work-related accident is central to his claim. There were significant inconsistencies between Claimant's description of the alleged accident in his deposition testimony and his description of the alleged accident during the hearing. Claimant even gave inconsistent statements/differing accounts at the hearing. These inconsistencies call into question the truthfulness and credibility of Claimant's testimony. This finding of fact is based on the evidence as a whole, including Claimant's testimony.

5. David Hudgins, Jr., a witness to the event, testified that while he was worried about Claimant's safety, and thought that Claimant was off balance on the ladder, it appeared Claimant was never completely off of the ladder on May 29, 2015. This finding of fact is based on the evidence as a whole, including David Hudgins' testimony.
6. Tim Gunter, the crane operator, testified that never complained of a shoulder injury to him on May 29, 2015. He testified that Claimant continued to work on the sign installation after the alleged work injury occurred. Mr. Gunter testified that he and Claimant operated a two-man auger on May 30, 2015. Mr. Gunter testified that Claimant used two hands when operating the auger, and they had to maintain

control over the auger which was “jerking us all over the place”. (Hr. Tr. p. 71 at line 10.) Mr. Gunter testified that Claimant did not complain about his shoulder on May 30, 2015. This finding of fact is based on the evidence as a whole, including Tim Gunter’s testimony.

7. There is no question that Claimant had a medical issue as to his right shoulder; however, Claimant failed to prove the right shoulder condition was the result of a work-related accident that happened on May 29, 2015. Claimant alleges that he was hanging onto a sign by one hand/arm to prevent himself from falling to the ground. Claimant has failed to meet his burden of proving this took place at all, much less that it resulted in a compensable injury by accident to his right shoulder. This finding of fact is based on the evidence as a whole.
8. I give no weight to Claimant’s concerns about losing his job if he reported a work-related accident because Mr. Gunter had a prior workers’ compensation claim and experienced no problems with the Employer. Additionally, Claimant had a prior on the job injury and experienced no repercussions. This finding of fact is based on the evidence as a whole.
9. Viewing the case in its entirety, I cannot make a finding of compensability. This case is therefore dismissed with prejudice.

Conclusions of Law

Accordingly, as provided in § 42-17-40, S.C. Code Ann. (1976), as amended, it is the determination of this Commissioner that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant failed to prove that he sustained an injury to his right shoulder as a result of a work-related accident on May 29, 2015.
3. Under § 42-15-60, Claimant is not entitled to any compensation from medical treatment related to his alleged right shoulder injury on May 29, 2015.
4. Under §§ 42-9-10, 42-9-20, and/or 42-9-30, Claimant is not entitled to any disability benefits.

On June 1, 2016, within the statutory period, Counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties prior to oral arguments presented to the Appellate Panel on August 16, 2016. By appeal, counsel for Claimant submitted the following grounds for review:

1. Did the Commissioner err in admitting into evidence the ISO Claims Search Match Report Summary offered by the employer? (D/O p. 3)
2. Did the Commissioner err in admitting the SLED Report as offered by the employer? (D/O p. 3)
3. Did the Commissioner err in failing to give any weight to the fact that the Claimant, during his tenure with this employer, also was required to install a Dollar General sign which required drilling a hole, setting steel, driving angle line in the ground and welding it off? (Hr. Tr. p. 14; D/O p. 4)
4. Did the Commissioner err in the findings of fact that the Claimant testified that he did report his injury at the time, ask for medical treatment, and was denied? (D/O p. 6)
5. Did the Commissioner err in finding as a fact that Claimant testified that he “changed” his testimony after he heard David Hudgins, Jr.’s story? (D/O pp. 6-7)

6. Did the Commissioner err in finding as a fact that the Claimant stated that he was unsure if he told doctors that he fell 12 feet or that he was hanging 30 feet in the air by his right arm for 3 to 4 minutes? (APA p. 7; Hr. Tr. p. 36; and D/O p. 7)
7. Did the Commissioner err in finding as a fact that the Claimant worked with Tim operating a two man auger the day after the incident? (D/O p. 7)
8. Did the Commissioner err in giving any weight to the ISO Report and the findings of fact concerning prior Workers' Compensation claims of which the Claimant denied? (D/O p. 7)
9. Did the Commissioner err in finding as fact that the Claimant never received any money from his claim with Liberty Mutual from an incident arising on July 14, 2005? (D/O p. 8)
10. Did the Commissioner err in not finding as a fact that the Claimant had not been convicted of criminal domestic violence by the Easley Police Department? (D/O p. 8)
11. Did the Commissioner err in finding as a fact that the Claimant stated that he was unsure why he did not disclose his prior right shoulder injury from his motor vehicle accident during his deposition? (Claimant's depo. P. 38, 41, 42, 43, 44; D/O p. 8)
12. Did the Commissioner err in giving weight to the testimony of the Claimant concerning prior Workers Compensation claims and prior criminal records in light of the overall circumstances of this case? (D/O pp. 7-8)
13. Did the Commissioner err in finding as a fact that David Hudgins, Jr. stated that he recognized the Claimant because he had worked with the Claimant on business in the past? (D/O p. 9)

14. Did the Commissioner err in failing to find as a fact that David Hudgins, Jr. testified that "I didn't know anything was wrong until the following day when I got a call from Sign Crafters? (Hr. Tr. p. 57) The Claimant would ask you to note that it was the testimony of Tim Gunter, the only testimony offered by the employer, that they did not learn of any injury to Ron Collins until June 2, 2015, when in fact David Hudgins, Jr., the only independent witness in the case, testified he got a call from Sign Crafters the following day, May 30, 2015. (Hr. Tr. p. 57)
15. Did the Commissioner err in failing to find as a fact from the testimony of David Hudgins, that "Ron was trying to tuck (sic) it in place. It was a very heavy fabricated piece. I don't know if it was the combination of just it being picked up and his momentum, but it did look like he was off balance." (Hr. Tr. p. 58) ... "It was already set in place. It wasn't square with the two poles around, so he was trying to tug on it to move it into place. As I said, it's very heavy, probably 500 pounds or so. And in order to move that - - he wasn't able to tug it into place and I guess his momentum kind of carried him off, it seemed like to me. The ladder looked like it got off balance, like it leaned and it looked like he was holding to the sign to maintain his balance." (Hr. Tr. p. 59) "All I saw was him getting off balance. It worried me and I tried to yell to Tim, you know, I was worried for his safety." (Hr. Tr. p. 60) Question: "What would you have said about what you saw of Mr. Collins?" Answer: "He was hanging from the fabricated piece and to me it didn't look like he was falling hanging. Like I said, it looked like he lost his balance and he maintained at least one foot on the ladder." (Hr. Tr. p. 61)

16. Did the Commissioner err in failing to find as a fact from David Hudgins, Jr.'s testimony that the incident involving the Claimant that day caused the fabricated piece of metal to dip as the Claimant had to grab hold of the sign? (Hr. Tr. p. 62)
17. Did the Commissioner err in failing to find as a fact from David Hudgins Jr.'s testimony when asked the following question in cross-examination. . . . "Did you ever see him dangling in the air hanging onto the sign"? Answer: "It didn't seem like he was hanging freely to me. It looked like at least one leg was on the ladder and, you know, he had one, maybe two arms on it at all times. I don't know how many hands he had because I was trying to go back and forth checking on him and then also trying to communicate to Tim." (Hr. Tr. p. 63)
18. Did the Commissioner err in finding as a fact from David Hudgins, Jr.'s testimony that "the Claimant was not able to move it into place and his momentum caused the ladder to lean off balance"? (D/O p. 9)
19. Did the Commissioner err in finding as a fact that David Hudgins, Jr.'s testified that "he thought if someone yanked on the sign, it would tilt down on one side, but he could not say with certainty that was what happened on the date of the incident."? (Hr. Tr. p. 62) When Hudgins testified "as we were speaking earlier, if anyone would have been able to notice there was a dip in the sign, Tim, the crane operate, would have seen only from the front whereas I had a side view." (Hr. Tr. p. 62)
20. Did the Commissioner err in finding on one hand that the Claimant failed to prove that an incident occurred on May 29, 2015 and on the other hand finding as a fact that David Hudgins, Jr. testified that the Claimant got into the bucket and welded with both hands "after the incident." (D/O p. 10)

21. Did the Commissioner err in giving any weight to the testimony of Timothy Gunter, a current employer of the Defendant/employer when he was still employed by the employer making \$19.00 per hour? (D/O pp. 10-11)
22. Did the Commissioner err in finding as a fact, from the testimony of Timothy Gunter, that it looked like a “normal install” when in fact the only independent witness, David Hudgins, Jr., had testified as to an incident occurring and to his notifying Tim of the incident? (D/O p. 10; Hr. Tr. p. 60)
23. Did the Commissioner err in finding as a fact from the testimony of Timothy Gunter that “he and Claimant operated a two man auger the day following the incident? (Hr. Tr. pp. 69-70)
24. Did the Commissioner err in giving any weight to the findings of fact concerning the Claimant’s prior medical evidence when reaching his decision as to whether or not a work related injury occurred on May 29, 2015? (D/O p. 11-13)
25. Did the Commissioner err in finding as a fact that the Claimant also alleged that he fell approximately 12 feet on the date of the accident? (D/O p. 13)
26. Did the Commissioner err in finding as a fact that there were significant inconsistencies with the Claimant’s description of the alleged accident in his deposition testimony and his description of the alleged accident during the hearing? (D/O p. 15)
27. Did the Commissioner err in finding as a fact that the Claimant even gave inconsistent statements/differing accounts at the hearing? (D/O p. 15)
28. Did the Commissioner err in finding as a fact that these inconsistencies call into question the truthfulness and credibility of the Claimant’s testimony? (D/O p. 15)

29. Did the Commissioner err in failing to find as a fact that a work related injury occurred to the Claimant on May 29, 2015, in light of his finding that David Hudgins, Jr. testified that he was worried about the Claimant's safety and thought the Claimant was off balance on the ladder? (D/O p. 15, #5)
30. Did the Commissioner err in finding as a fact that the Claimant failed to prove that the right shoulder condition was a result of a work related accident that happened on May 29, 2015? (D/O p. 15-16)
31. Did the Commissioner err in finding as a fact that the Claimant has failed to meet his burden of proving that this took place at all, much less that it resulted in a compensable injury by accident to his right shoulder? (D/O pp. 15-16, #7)
32. Did the Commissioner err in finding as a fact "I cannot make a finding for compensability. This case is therefore dismissed with prejudice."? (D/O p. 16, #9)
33. Did the Commissioner err in ordering that the Claimant failed to meet his burden of proving that (sic) sustained a compensable injury by accident and is not entitled to any compensation or medical treatment for his alleged right shoulder injury? (D/O p. 16)

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Single Commissioner.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that all of the Single Commissioner's Findings of Fact and

Conclusions of Law are correct as stated. As such, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, fully affirms the Single Commissioner's Order, and issues the following Findings of Fact and Conclusions of Law, which shall become, and hereby are, the law of the case.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. Claimant alleged that he sustained an injury by accident to his right upper extremity and right shoulder on May 29, 2015.
2. Claimant sought a finding of compensability as well as payment for the treatment he had received at Pelham Medical Center, Piedmont Orthopedics, St. Francis Hospital, and St. Francis Therapy Center. He also sought the continuation of medical care, treatment, and TTD from May 30, 2015 to present and continuing.
3. Defendants denied the claim with the position that no compensable injury occurred. The burden of compensability rests solely with Claimant.
4. Claimant assisted in a sign installation on May 29, 2015. He asserted that he was injured while installing said sign. During his deposition, Claimant testified that he was knocked off of a ladder while installing the sign and hung onto the sign with one hand for "about a minute". (Claimant's Deposition p. 47 at line 14.) While describing the alleged accident at the hearing, Claimant's version of events changed drastically. Upon questioning by his attorney, Claimant stated, "I'm not sure whether my feet left the ladder or not." (Hr. Tr. p. 17 at lines 11-12.) Claimant also testified, "I do know that my feet may or may not have left the ladder. One of

them may have stayed on the ladder, but it sure felt like I left the ladder.” (Hr. Tr. p. 19 at lines 8-10.) However, upon cross-examination, Claimant testified, “I’m not sure one of my foot come off.” (Hr. Tr. p. 33 at line 2.) Claimant’s description of the alleged work-related accident is central to his claim. There were significant inconsistencies between Claimant’s description of the alleged accident in his deposition testimony and his description of the alleged accident during the hearing. Claimant even gave inconsistent statements/differing accounts at the hearing. These inconsistencies call into question the truthfulness and credibility of Claimant’s testimony. This finding of fact is based on the evidence as a whole, including Claimant’s testimony.

5. David Hudgins, Jr., a witness to the event, testified that while he was worried about Claimant’s safety, and thought that Claimant was off balance on the ladder, it appeared Claimant was never completely off of the ladder on May 29, 2015. This finding of fact is based on the evidence as a whole, including David Hudgins’ testimony.
6. Tim Gunter, the crane operator, testified that never complained of a shoulder injury to him on May 29, 2015. He testified that Claimant continued to work on the sign installation after the allege work injury occurred. Mr. Gunter testified that he and Claimant operated a two-man auger on May 30, 2015. Mr. Gunter testified that Claimant used two hands when operating the auger, and they had to maintain control over the auger which was “jerking us all over the place”. (Hr. Tr. p. 71 at line 10.) Mr. Gunter testified that Claimant did not complain about his shoulder on May 30, 2015. This finding of fact is based on the evidence as a whole, including Tim Gunter’s testimony.

7. There is no question that Claimant had a medical issue as to his right shoulder; however, Claimant failed to prove the right shoulder condition was the result of a work-related accident that happened on May 29, 2015. Claimant alleges that he was hanging onto a sign by one hand/arm to prevent himself from falling to the ground. Claimant has failed to meet his burden of proving this took place at all, much less that it resulted in a compensable injury by accident to his right shoulder. This finding of fact is based on the evidence as a whole.
8. We give no weight to Claimant's concerns about losing his job if he reported a work-related accident because Mr. Gunter had a prior workers' compensation claim and experienced no problems with the Employer. Additionally, Claimant had a prior on the job injury and experienced no repercussions. This finding of fact is based on the evidence as a whole.
9. Viewing the case in its entirety, we cannot make a finding of compensability. This case is therefore dismissed with prejudice.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, Claimant failed to prove that he sustained an injury to his right shoulder as a result of a work-related accident on May 29, 2015.
3. Under § 42-15-60, Claimant is not entitled to any compensation from medical treatment related to his alleged right shoulder injury on May 29, 2015.

4. Under §§§ 42-9-10, 42-9-20, and/or 42-9-30, Claimant is not entitled to any disability benefits.

ORDER/AWARD

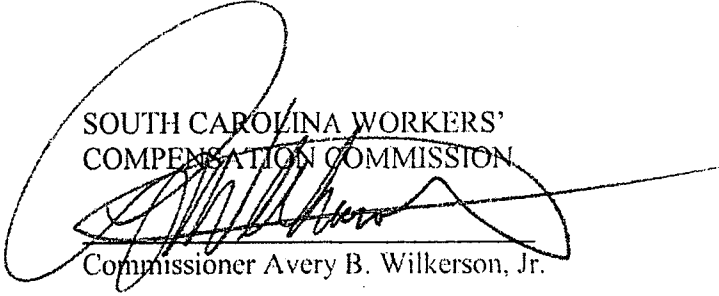
Based upon the foregoing Findings of Fact and Conclusions of Law.

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on May 18, 2016, is hereby affirmed by the Panel, and the above Findings of Fact and Conclusions of Law shall constitute the Decision and Order of the Appellate Panel.

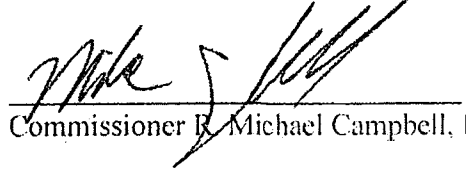
IT IS FURTHER ORDERED that Claimant failed to meet his burden of proving that he sustained a compensable injury by accident and is not entitled to any compensation or medical treatment for his alleged right shoulder injury. Therefore, Claimant's workers' compensation claim is dismissed with prejudice.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Avery B. Wilkerson, Jr.


Commissioner Melody D. James


Commissioner R. Michael Campbell, II

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 October 14, 2016