

81779

RECEIVED

DEC 01 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1318928

James A. Ashford,.....Respondent,

v.

Prysmian Power Cables and
Sentry Insurance Company,.....Appellants.

NOTICE OF APPEAL

Prysmian Power Cables and Sentry Insurance Company appeal the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission ("Commission") filed on November 1, 2016. Appellants received notice of entry of this Decision and Order on November 1, 2016. Pursuant to the Section 42-17-60 of the South Carolina Code Annotated, the grounds for appeal are as follows:

1. Did the Commission err in Finding of Fact #4, wherein it found as a fact that "Claimant has a pending Form 50 that alleged injuries to his psyche, right lower extremity and right side which are not timely for the purposes of this hearing and are not properly before me"; said error being this finding is not supported by substantial evidence, as these issues were in fact properly and timely before the Commission?
2. Did the Commission err in Finding of Fact #4, wherein it found as a fact that "Claimant has a pending Form 50 that alleged injuries to his psyche, right lower extremity and right side which are not timely for the purposes of this hearing and are not properly before me"; said error being this finding constitutes a denial of Appellants' right to due process as to these issues?
3. Did the Commission err in Finding of Fact #7, wherein it found as a "fact" portions the claimant's Hearing testimony; said error being this finding is not supported by substantial evidence as the testimony of the claimant is inconsistent with the uncontroverted evidence in the record?

4. Did the Commission err in Finding of Fact #19, wherein it found as a “fact” an incomplete summary of Dr. Fulton’s report from February 13, 2015; said error being summary fails to include and/or address Dr. Fulton’s report that the claimant’s symptoms may be causally-related to an underlying diabetic neuropathy, which the claimant refused to discuss with Dr. Fulton?
5. Did the Commission err in Finding of Fact #22, wherein it found as a “fact” a summary of the results of the claimant’s EMG/NCS performed by Dr. Zgleszewski on June 3, 2015; said error being the results of the EMG do not provide evidence of a condition causally-related to the admitted injury by accident, but instead provide numerous “possible” diagnosis and, as such, the claimant has not met his burden of proving, to a reasonable degree of medical certainty, that additional medical treatment for the causally-related condition will tend to lessen his period of disability?
6. Did the Commission err in Finding of Fact #23 wherein it found “the defendants have not authorized a hand specialty physician to treat claimant after the abnormal right upper extremity EMG/NCS”; said error being the results of the EMG do not provide evidence of a condition causally-related to the admitted injury by accident, but instead provide numerous “possible” diagnosis and, as such, the claimant has not met his burden of proving, to a reasonable degree of medical certainty, that additional medical treatment for the causally-related condition will tend to lessen his period of disability?
7. Did the Commission err in Finding of Fact #24 and Conclusion of Law #11 wherein it found as a fact and concluded as a matter of law that “claimant is not at MMI for his admitted right upper extremity injury”; said error being the finding and conclusion is not supported by substantial evidence in the record and is predicated upon an error of law?
8. Did the Commission err in Finding of Fact #25 and Conclusion of Law #11, wherein it found as a fact and concluded as a matter of law that “claimant is entitled to all causally-related future medical treatment, as recommended by Dr. Gabr”; said error being this finding is not supported by substantial evidence and is predicated upon an error of law?
9. Did the Commission err in Finding of Fact #28 and Conclusion of Law #12, wherein it found as a fact and concluded as a matter of law that “defendants are entitled to stop temporary total disability benefits (TTD) as of May 4, 2015”; said error being this finding is predicated upon an error of law, specifically as the defendants should have been entitled to stop TTD benefits on February 13, 2015, the date of MMI?
10. Did the Commission err in Finding of Fact #29 and Conclusion of Law #12, wherein it found as a fact and concluded as a matter of law that “defendants are entitled to a credit for all TTD benefits from May 4, 2015, through the date of this Decision and Order”; said error being this finding is predicated upon an error of law, specifically the Commission’s failure to find the claimant reached MMI on February 13, 2015, thereby entitling the defendants to credit from the date of MMI?

11. Did the Commission err as a matter of law by failing to address ground for appeal number 13 raised on the Form 30, which addressed the violation of due process by the delay in the issuance of a Decision and Order by the Hearing Commissioner for more than one year after the filing of the Form 21 by the defendants, and more than 10 months after the Hearing?

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Nicolas L. Haigler
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400

Attorneys for Appellants

December 1, 2016

OTHER COUNSEL OF RECORD:

David N. Truitt, Esquire
Truitt Law Firm
925 Calhoun Street
Columbia, SC 29201
(803) 814-1556

Attorneys for Appellant-Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 01 2016

SC Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1318928

James A. Ashford,.....Respondent,

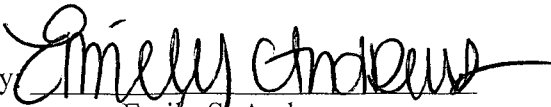
v.

Prysmian Power Cables and
Sentry Insurance Company,.....Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on James A. Ashford by depositing a copy of it in the United States Mail, postage prepaid, on December 1, 2016, addressed to his attorney of record, David N. Truitt, Esquire, Truitt Law Firm, 925 Calhoun Street, Columbia SC 29201 and Ms. Amy Bracy, Judicial Director, The South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, 29202-1715, on December 1, 2016.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By 

Emily S. Andrews
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Appellants

SOWELL **SG** GRAY

Litigation is our Business.

NICOLAS L. HAIGLER
Direct Dial 803 231.7847
Direct Fax 803 231.7853
Email nhaigler@sowellgray.com

December 1, 2016

VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: James A. Ashford v. Pysmian Power Cables
WCC File No.: 1318928
Date of Accident: 10/30/13
Claim No.: 55C098612
Our File No.: 5431/8392

Dear Ms. Kitchings:

Enclosed for filing are an original and one copy of a Notice of Appeal, as well as a copy of the order which is being challenged on appeal, in the above-referenced matter. Also enclosed is the Proof of Service of the Notice of Appeal on the Respondent and our Firm's check in the amount of \$100.00 for the filing fee.

By copy of this letter, we are hereby serving a copy of the attached document upon counsel for the claimant and the South Carolina Workers' Compensation Commission. Should you have any questions, please feel free to contact my office.

Very truly yours,


Nicolas L. Haigler

NLH:esa
Enclosure

cc: Ms. Amy Bracy, Judicial Director (w/enclosure)(SCWCC; via hand delivery)
David N. Truitt, Esquire (w/enclosure)(via U.S. Mail)
Ms. Dietra Garland (w/enclosure)(via e-mail)
Ms. Christina Trainor (w/enclosure)(via e-mail)
Mr. Terry Cummings (w/enclosure)(via e-mail)
Ms. Shafia Sarwar (w/enclosure)(via e-mail only)
Ms. Dianne Wells (w/enclosure)(via e-mail)
Ms. Melissa Manwaring (w/enclosure)(via e-mail)

RECEIVED
DEC 01 2016
SC Court of Appeals