

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1208234

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FEB 22 2017

SC Court of Appeals

Kimberly Odom, Employee/ClaimantAppellant,

vs.

Carolinas Hospital System, Employer and
Indemnity Insurance Company of NA, Carrier, Respondents.

INITIAL BRIEF OF APPELLANT

STEPHEN J. WUKELA
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STATEMENT OF ISSUES ON APPEAL

DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR IN FAILING TO FIND THAT THE CLAIMANT WAS ENTITLED TO TEMPORARY TOTAL COMPENSATION GIVEN THAT THE CLAIMANT HAD NOT REACHED MAXIMUM MEDICAL IMPROVEMENT AND HAD SUFFERED WORK-RELATED RESTRICTIONS THAT PREVENTED HER FROM PERFORMING HER JOB WITH THE EMPLOYER?

I. STATEMENT OF THE CASE

This is a Workers' Compensation case. The Claimant sustained an admitted injury by accident on June 20, 2012. The Employer admitted injury to her back and left leg, paid Temporary Total Disability Benefits, and provided medical treatment including the insertion of a Spinal Cord Stimulator. By Consent Order of March 18, 2014 (APA# 8), the parties resolved the Indemnity portion of the claim.

Thereafter, the Claimant filed a change of condition claim, pursuant to S.C. Code §42-17-90 and Estridge v. Joslyn Clark Controls, 325 S.C. 532 (Ct. App. 1997), alleging that the Claimant was no longer at maximum medical improvement as her psychological condition had deteriorated as a result of the injury.

By Order of June 28, 2016, the Single Commissioner found that the Claimant had suffered a change in condition and was no longer at maximum medical improvement. (See Order p. 12, Rulings of Law No. 3 and No. 4).

With regard to temporary total disability benefits the Single Commissioner found:

23. Given that no physician has removed the Claimant from work with regard to the worsening of her psychological condition, the issue as to Claimant's entitlement to temporary total disability benefits due to and caused by the Claimant's change of condition is premature at this time and reserved for further determination.

(06/28/16 Order p. 12, Finding 23).

The Claimant appealed to the Workers' Compensation Commission Appellate Panel, which affirmed. (12/30/16 Order, pp. 10-11, Finding 23).

This appeal followed.

ARGUMENT

THE SINGLE COMMISSIONER ERRED IN FAILING TO FIND THAT THE CLAIMANT WAS ENTITLED TO TEMPORARY TOTAL COMPENSATION GIVEN THAT THE CLAIMANT HAS NOT REACHED MAXIMUM MEDICAL IMPROVEMENT, HAD SUFFERED WORK-RELATED RESTRICTIONS THAT PREVENT HER FROM PERFORMING HER JOB WITH THE EMPLOYER, AND THE EMPLOYER HAS NOT OFFERED LIGHT DUTY EMPLOYMENT.

By virtue of the Order of December 30, 2016, the law of the case is that the Claimant is not at maximum medical improvement. (12/30/16 Order p. 11, Ruling of Law No. 4). This Court, in Lee v. Bondex, Inc., 406 S.C. 97, (Ct. App. 2013), held that prior to maximum medical improvement when seeking temporary total disability benefits:

... a claimant must prove only that work restrictions prevent him from performing the job he had before the injury, and that his current employer has not offered him light duty employment.

Lee v. Bondex, Inc. 406 S.C. 97, 102(Ct. App. 2013).

Claimant has restrictions as a result of this accident outlined in her Functional Capacity Evaluation on July 19, 2013. (APA No. 3, pp. 000116-000123, 000126). That evidence is uncontradicted in the record. Those restrictions prevent her from performing her job with the Employer as a direct care nurse, resulting in her termination on November 5, 2012. (APA No. 4).

Indeed, as the Commission found:

5. Claimant underwent Vocational Evaluation on 10/28/13 and 01/07/14. J. Adger Brown, Jr. and Joel D. Leonard both indicated that

Claimant would not be able to return to her previous employment as a nurse providing direct care. (12/30/16 Order, Finding of Fact No. 5, p. 3).

Therefore, pursuant to the Order of the Commission, the Claimant is not at maximum medical improvement. Pursuant to Lee v. Bondex, a claimant seeking temporary total disability benefits prior to maximum medical improvement must prove only that work restrictions prevent her from working the job she had before the injury and that light duty was not offered. The undisputed evidence in the record is that she cannot perform the job she had before the injury and that she has been terminated because of that inability. (APA No. 4, p. 148). Therefore, as a matter of law, pursuant to Lee v. Bondex, Claimant is entitled to temporary total disability benefits.

The Commission found that:

23. Given that no physician has removed the Claimant from work with regard to the worsening of her psychological condition, the issue as to Claimant's entitlement to temporary total disability benefits due to and caused by the Claimant's change of condition is premature at this time and reserved for further determination. (12/30/16 Order pp. 10-11, Finding 23).

There is no dispute that the Claimant's work restrictions are a product of her work-related injury. The Commission cites no law in support of the proposal that some restrictions should be considered and other restrictions discounted when judging a Claimant's ability to perform their job; and, therefore, their entitlement to temporary total disability benefits.


To the contrary, this Court has held in Lee v. Bondex, Inc. “for temporary total disability benefits Claimant must prove only that work restrictions prevent him from and his current employer has not offered him light duty employment.” That is precisely the case here.

CONCLUSION

For the foregoing reasons, the Appellant requests that this Court reverse the Commission’s finding that the Claimant is not entitled to temporary total benefits.

Respectfully submitted,

WUKEI A LAW FIRM

BY: 
STEPHEN J. WUKEI, A
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February 21st, 2017

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WORKERS' COMPENSATION COMMISSION

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SC Court of Appeals

Kimberly Odom, Appellant,

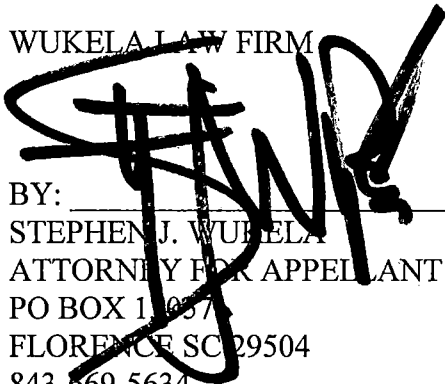
vs.

Carolinas Hospital System, Employer, and
Indemnity Insurance Company of NA, Carrier, Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on February 21st, 2017, addressed to the Respondents' attorney of record, Ashley Kirkham, at her office at Collins & Lacy, 1330 Lady Street, 6th Floor, Columbia, S.C., 29201.

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February 21, 2017

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

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FEB 22 2017

SC Court of Appeals

Re: Kimberly Odom v. Carolinas Hospital System
Appellate Case No. 2017-000148

Dear Ms. Kitchings:

With regard to the above, please find enclosed for filing the Initial Brief of Appellant, Designation of Matter to be Included in the Record on Appeal, and Proof of Service on counsel for Respondents, Ashley Kirkham.

With kind regards, I am

Yours truly,

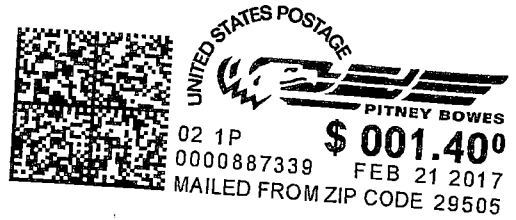
WUKELA LAW FIRM

STEPHEN J. WUKELA

SJW:jpb

Enclosures

cc: Ashley Kirkham
Collins & Lacy
1330 Lady Street, 6th Floor
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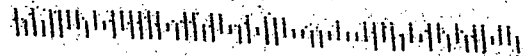


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SC Court of Appeals



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