



PAUL J. FOSTER, JR., 1928-1999  
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April 4, 2017

VIA FACSIMILE 803-734-1839  
& U.S. MAIL

Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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APR 07 2017

SC Court of Appeals

RE: *L'Tonya L. Scott vs. South Carolina Public Employee Benefit Authority,  
Employee Insurance Program*

Dear Ms. Kitchings:

Thank you for your letter of March 31, 2017. You will find enclosed a corrected Notice of Appeal. I apologize for the errors. The original is coming to you in the mail. Please let me know if you need anything further from me. Thank you for your consideration in this matter.

With kind regards, I remain,

Yours very truly,

M. Leila Louzri

/mll  
Encl.

cc: Melissa Alexander, Esq.  
Justin Werner, Esq.  
Jamie Hedgepath, Esq.  
South Carolina Administrative Law Court

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, S.C. Administrative Law Judge

Case No. 16-ALJ-30-0293-AP

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SC Court of Appeals

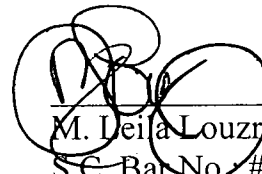
L'Tonya Scott, ..... Appellant,

v.

South Carolina Public Employee Benefit Authority,  
Employee Insurance Program, ..... Respondent.

**NOTICE OF APPEAL**

L'Tonya Scott appeals the decision of the Honorable Deborah Brooks Durden,  
dated March 16, 2017. Appellant received a copy of this decision on March 16, 2017.



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S.C. Bar No. #101793

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Attorneys for Respondent

Dated: March 28, 2017

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, S.C. Administrative Law Judge

Case No. 16-ALJ-30-0293-AP

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APR 07 2017

SC Court of Appeals

L'Tonya Scott, ..... Appellant,

v.


South Carolina Public Employee Benefit Authority,  
Employee Insurance Program, ..... Respondent.

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned attorney for the Appellant did cause the Notice of Appeal to be served upon the attorney for the Respondent, via United States Mail, proper postage affixed thereto, on the 4<sup>th</sup> day of April 2017.

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Attorneys for Appellant

Dated: April 4, 2017

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

L'Tonya Scott,

Appellant,

vs.

South Carolina Public Employee Benefit  
Authority, Employee Insurance Program,

Respondent.

Docket No.: 16-ALJ-30-0293-AP

ORDER

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APR 07 2017

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by L'Tonya Scott (Appellant). Appellant seeks review of the final decision of the Employee Insurance Program (EIP), part of the South Carolina Public Employee Benefit Authority (PEBA), denying Appellant additional long-term disability (LTD) benefits.

BACKGROUND

Appellant worked for the South Carolina State Ports Authority as a Shipping Order Clerk, which is considered a light occupation. She began working for the Ports Authority in 2001 and ceased working on May 9, 2012, due to her health problems. Appellant has sickle cell anemia, a disease which affects red blood cells. On May 10, 2012, Appellant went to the emergency room for a sickle cell crisis. She remained in the hospital until May 29, 2012. During that time, she experienced severe pain, developed pneumonia with acute chest syndrome, and went into septic shock, among other things. While in the hospital, Appellant also developed heel ulcers. The sickle cell anemia, a left heel ulcer, lower back pain, and hypertension formed the basis for Appellant's disability claim.

Initially, Appellant applied and was approved for basic LTD (BLTD) benefits, based on a date of disability of May 10, 2012. Appellant's claim was processed by the Standard Insurance Company (Standard), the benefits manager and third-party claims administrator for the Basic Long Term Disability Income Benefit Plan (Plan) of the EIP. The Plan dictates the terms under which Appellant is covered for BLTD benefits. Specifically, the Plan defines disability in three ways: Own Occupation Disability, Any Occupation Disability or, Partial Disability. Own Occupation

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Disability is the definition applied during the Benefit Waiting Period and the first 24 months of Disability. Any Occupation Disability is the definition applied from the end of the Own Occupation Period to the end of the Maximum Benefit Period. Put simply, a covered employee is disabled from their Own Occupation if he or she cannot perform the material duties of a position in their field for medical reasons.<sup>1</sup> Similarly, a covered employee is disabled from all occupations if he or she cannot perform the duties of a position in any field.

Appellant's initial claim was approved based on the Own Occupation definition. After the 90-day waiting period, Appellant began receiving benefits on November 9, 2012. Standard ceased disbursement of benefits and closed Appellant's file on April 14, 2013 after finding that she no longer met the Own Occupation definition. This closing was based in part on Appellant's anticipated return to work. On July 16, 2013, an attorney for Appellant requested that Standard review its decision and asked to submit additional medical records. Over the course of several months Appellant's records were further developed. On May 1, 2014, Standard upheld its denial on the basis that the records did not show that Appellant's conditions would have prevented her return to work in a sedentary or light level occupation after April 14, 2013. Appellant's attorney appealed to PEBA. The reviewing committee found that Appellant's case was properly closed and no further benefits are payable to Appellant in a decision mailed August 8, 2016. Appellant filed an appeal with the ALC to review the decision of the agency.

#### STANDARD OF REVIEW

The Board of Directors of PEBA has the authority to establish the exclusive procedure by which EIP decisions are made. See S.C. Code Ann. § 1-11-710(C) (Supp. 2016). Decisions of the EIP are subject to appellate review by the ALC under the standard set forth in South Carolina Code Section 1-23-380. S.C. Code Ann. §§ 1-11-710(C) and 1-23-600(D) (Supp. 2016). Consequently, the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2016). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon

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<sup>1</sup> The exact language of the Plan may be found on page 28 of the Record on Appeal (Volume 1).

unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

#### ISSUE ON APPEAL

Whether the EIP's decision to deny Appellant further LTD benefits is supported by substantial evidence.

#### DISCUSSION

Appellant argues that PEBA's decision is clearly erroneous in view of the reliable, probative, and substantive evidence in the entire record. Appellant further argues that "the weight of the evidence in this case clearly tips in Appellant's favor . . . ." However, this is not the standard by which this matter is reviewed. In reviewing an EIP decision, the Court applies the substantial evidence rule. Substantial evidence is "not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached . . . ." Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (citation omitted). Assessing the weight and credibility of the evidence is a task for the fact-finder, and the appellate court will not disturb those findings, absent error of law. See S.C. Code Ann. § 1-23-380(5) (Supp. 2016); see also Houston v. Deloach & Deloach, 378 S.C. 543, 551-52, 663 S.E.2d 85, 89 (Ct. App. 2008) (under the APA, the appellate court does not overturn findings of fact unless there is no reasonable probability that the fact could be as related by the witness). Furthermore, "[t]he possibility of drawing two inconsistent conclusions from the evidence will not mean the agency's conclusion was unsupported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (citation omitted). Lastly, "the burden is on appellants to prove convincingly that the agency's decision is unsupported by the evidence." Id.

Appellant argues that the EIP erred in reaching its decision because (1) it failed to give greater weight to Appellant's healthcare providers, especially her podiatrist, instead of the agency reviewing physician, (2) it failed to assess Appellant for mental health issues, (3) it failed to find that Appellant could not perform the requirements of her job with "reasonable continuity," and (4) it failed to consider Appellant's federal Social Security Disability approval. In response, PEBA points out that the date relevant to consideration of Appellant's case is April 15, 2013. Evidence of Appellant's health at a later time is not directly relevant to the question of whether she continued

to be disabled from her Own Occupation at the close of her case. The agency also argues that the doctor's opinion upon which Appellant relies in her brief stated that she could return to work on the date in question. Further, PEBA notes that it confined its analysis to conditions Appellant claimed made her disabled and did not consider other transient or undocumented issues. Regarding the issue of the Social Security determination, PEBA argues that no specific information regarding the reason for Appellant's favorable disability determination was submitted and included in the record, only the notice of the determination. Additionally, PEBA argues that the records related to the determination, which are part of the record, support its position.

After review of the record, the Court concludes that Appellant has not demonstrated that PEBA erred in closing her file. Substantial evidence supports PEBA's conclusion that Appellant did not continue to meet the definition of disability from her Own Occupation at the time her case was closed. Appellant's medical records and the review by Standard's consulting physician support PEBA's finding that Appellant's sickle cell anemia, while chronic, was fairly well controlled by her medications and fluids and did not prevent her from working in a light occupation such as her duties as Shipping Order Clerk. The record indicates that Appellant's heel ulcer healed and her own podiatrist indicated that she could return to work on April 15, 2013. The agency decision specifically found that Appellant's file showed no objective evidence of symptoms that precluded Appellant from performing her job duties on a reasonably consistent basis on April 14, 2013. This Court must review this case according to the standards set forth above. Appellant has provided no controlling law to support the argument that PEBA erred as a matter of law by not including the Social Security determination in its analysis under the Plan.

#### ORDER

**THEREFORE, IT IS HEREBY ORDERED** that PEBA's final agency determination is **AFFIRMED**.

**AND IT IS SO ORDERED.**

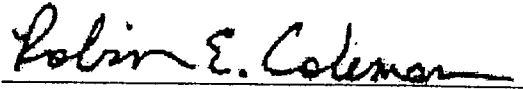


Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

March 16, 2017  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman  
Judicial Aide to Deborah Brooks Durden

March 16, 2017  
Columbia, South Carolina

**FILED**

March 16, 2017

SC ADMIN. LAW COURT