

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No: 1502120

Reginald D. Evans, Employee, Claimant.....Appellant,

v.

Exel Inc. Employer and New Hampshire Insurance Company Carrier.....Respondents,

APPELLANTS' FINAL BRIEF

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SC Court of Appeals

April 18, 2017

Reginald Evans
1200 Broad Street #123
Sumter, SC 29150
484-725-0621

Amanda Mellard
MGCLAW
PO Box 2980
Greenville, SC 29602
Attorney for Respondent

Helen F. Hiser
MGCLAW
PO Box 2980
Greenville, SC 29602
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. Did the Commission err in, Appellant did not seek an award of disfigurement at initial hearing and is therefore is barred from doing so on appeal?
2. Did the Commission err in, only awarding the Appellant 35% permanent partial disability to leg minus credit of overpayment of TTD
3. Did the Commission err in, not requiring Respondent to pay Appellant legal fees and Long-Term Disability?

STATEMENT OF THE CASE

On February 21, 2015 Appellant sustained right leg crush injury while working for the Respondent. As result of the injury, Appellant suffered an open wound which became infected. The Appellant now has a 6 to 7 inch scar on the right leg which is about 2 inches in width which became a Keloid. On July 8, 2015 an EMG study confirmed permanent nerve damage in the right leg.

On January 8, 2016 Appellant doctor released the Appellant was at maximum medical improvement. Appellant doctor opined the Appellant has permanent light duty restrictions, which also include of no lifting over 20 lbs, no sitting for more than 2 hours and no standing for more than 2 hours. The hearing Commissioner Aisha Taylor issued an order and finding which stated “ based on the medical evidence including Claimant’s impairment rating and permanent work restrictions, which we find severely limits his ability to return to work given his work history.”

FACTS

1. The Appellant was covered employee at all times stated.
2. The Appellant was employer was a covered under the Act.
3. The Appellant did sustain a compensable injury in the course and scope of his employment to the right leg.

ARGUMENTS

- I. Appellant did not seek an award of disfigurement at initial hearing and is therefore is barred from doing so on appeal. The Commission Erred not awarding disfigurement due to ineffective counsel of the Appellant attorney. The Appellant clearly have a keloid.
- II. Respondent will pay the Appellant 35% permanent partial disability to leg minus credit of overpayment of TTD. The Commission found Appellant doctor opined the Appellant has permanent light duty restrictions, which also include of no lifting over 20 lbs, no sitting for more than 2 hours and no standing for more than 2 hours. The hearing Commissioner Aisha Taylor issued an order and finding which stated “ based on the medical evidence including Claimant’s impairment rating and permanent work restrictions, which we find severely limits his ability to return to work given his work history.” The Commission should have found the Appellant at least or more than 60% permanent partial disable. The Respondent did not offer the Appellant another job. At no time did the Appellant refuse to return to work therefore the Respondent should not be entitled to overpayment.

- III. Respondent was not required to pay Appellant legal fees. Due to ineffective counsel of the Appellant attorney, the Appellant attorney did not request refund of attorney fees. The Respondent told Liberty Mutual Insurance that the Appellant was not entitled to Long-Term Disability.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Workers' Compensation Commission and Remand the Case to the Commission to follow the opinion of this Honorable Court.

Respectfully submitted,

April 18, 2017

A handwritten signature in black ink, appearing to read "Reginald Evans". The signature is written in a cursive, flowing style.

Reginald Evans
1200 Broad Street #123
Sumter, SC 29150
484-725-0621