

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

Susan S. Barden, Commissioner
T. Scott Beck, Commissioner
Gene McCaskill, Commissioner

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WCC File No. 1310882

MAY 18 2017

Appellate Case No. 2016-002296

SC Court of Appeals

Tyrone Lawrence, Employee, Claimant, Respondent,

v.

Advanced Glassfiber Yarns, Inc., Employer, and Great American Alliance Insurance Co.,
Carrier, Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

May 18, 2017



E. Ros Huff, Jr., Esquire #2767
Shelby G. Hapeshis, Esquire #74731
HUFF AND HAPESHIS, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232 telephone

**Attorneys for Advanced Glassfiber Yarns, Inc.,
Employer and Great American Alliance Ins., Carrier,
Appellants**

Other Counsel of Record:
William L. Smith, II
Chappell, Smith & Arden
Post Office Box 12330
Columbia, SC 29211

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In response to Respondent/Claimant's Initial Brief, the Employer/Carrier reply with the following:

ARGUMENTS

ARGUMENT I

THE CLAIMANT DID NOT MEET HIS BURDEN OF PROVING AND THE PREPONDERANCE OF THE EVIDENCE DOES NOT SUPPORT A FINDING THAT THE CLAIMANT SUSTAINED A COMPENSABLE INJURY BY ACCIDENT ARISING OUT OF HIS COURSE AND SCOPE OF EMPLOYMENT, THUS ENTITLING HIM TO WORKERS COMPENSATION BENEFITS.

The Respondent, in his brief contends that the Commission's finding of an injury by accident because it is proven by the substantial evidence in the record. This is untrue. Respondent argues that the records and deposition testimony offered by Dr. Carter, Dr. Poletti, and Dr. Lehman are evidence that the claimant suffered an injury. The only knowledge that any of these doctors have concerning the claimant's accident came second hand from the claimant who is untruthful. The claimant was untruthful both to the doctors and under oath at his deposition about prior injuries to these body parts. The doctors were not present to witness any injury and moreover, numerous tests completed by these doctors were negative. Therefore, the doctors' testimony is not substantial evidence that the claimant suffered an "injury."

The claimant contends that the testimony of co-workers and the Form 12A are substantial evidence that an injury by accident occurred. However, the witnesses testified only that he saw the light fixture hanging from the ceiling directly over a table some debris. It was impossible for the Claimant to be struck because the work table blocked the claimant. None of them witnessed the accident. In fact, Ricky Railford specifically testified that he did not see the accident so Claimant's argument that his testimony that respondents appeared to be in shock after he was hit is not evidence of the accident. (HT p. 87 lns. 10-12). Claimant, in his brief, contends that the 12A is evidence of an accident because it states "hit by a falling light fixture in ceiling." This is

untrue as the 12A states simply that claimant had contusion to the back of head and neck. (12A). There is no description of a mechanism of injury. While the incident report states that the claimant was hit by a falling light fixture, the report is clear that the mechanism of injury was reported by the claimant solely and the injury was not witnessed.

Causation is not met by the testimony of the physicians either as argued by Claimant. As stated previously, claimant had numerous pre-existing issues. Moreover, the medical evidence does not support causation. Therefore, the finding of causation is not supported by the evidence.

ARGUMENT II

THE ISSUE OF CREDIBILITY IS STILL PERTINANT IN A RULING BY THIS COURT

Claimant's attorney contends that the issue of credibility is reserved for the SCWCC appellate panel. However, when evidence yields but one conclusion, and the lower court rules to the contrary, it rises to an error of law. *McBride v. School Dist. Of Greenville*, 698 S.E.2d 845, 389 S.C. 546 (Ct. App. 2010).

In view of all of the evidence presented, the SC Workers Compensation Commission committed an error of law in finding the claim compensable. While credibility was determined by the appellate court (South Carolina Workers' Compensation Appellate Panel), the medical records, witness testimony including inconsistent testimony of the claimant give rise to the error of law.

ARGUMENT III

THE SINGLE COMMISSIONER ERRED IN APPOINTING DR. POLETTI AS THE AUTHORIZED TREATING PHYSICIAN, THE ERROR BEING THAT THE DEFENDANTS HAVE THE RIGHT TO CHOOSE THE TREATING PHYSICIAN PURSUANT TO MCKINNEY V. KIMBERLY CLARK CORP.

The SC Workers' Compensation Commission committed an error of law when appointing Dr. Poletti as the authorized treating physician. The claimant's attorney contends that

the Commission may override the employer's choice of provider. However, the Employer in this instance did not choose a provider. Moreover, the *McKinney* decision, in interpreting S.C. Code Ann. Section 42-15-60, is clear that that is not the case. *McKinney v. Kimberly Clark Corp*, 658 S.E.2d 112 (App. 2008); S.C. Code Ann. Section 42-15-60. The only case cited by Claimant on the issue of medical providers after the date of the McKinney decision is *Martin v. Rapid Plumbing*, 369 S.C. 278, 292, 631 S.E.2d 547,555 (Ct. app. 2006). However, the Martin decision is not applicable to the current situation as in that case, the employee already chose a physician and the commissioner overrode that choice. It is clear that the defendants have the right to deny a claim, and once found compensable choose the physician. Therefore, the SC Workers Compensation Commission committed an error.

CONCLUSION

Based on the above cited arguments, the Defendants would respectfully request that the Order of South Carolina Workers Compensation Appellate Panel be reversed in its entirety.

Respectfully Submitted,



E. Ros Huff, Jr., Esquire #2767
Shelby G. Hapeshis, Esquire #74731
HUFF AND HAPESHIS, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232 telephone
Attorneys for Advanced Glassfiber Yarns, Inc., Employer
and Great American Alliance Ins., Carrier, Appellants

May 18¹⁸, 2017
Irmo, South Carolina

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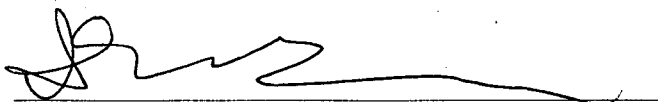
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief by depositing a copy of the same in the United States Mail, postage prepaid, on May 18, 2017 to the following parties, and or their representatives:

William L. Smith, II
Chappell, Smith & Arden
Post Office Box 12330
Columbia, SC 29211

May 18, 2017



E. Ros Huff, Jr., Esquire #2767
Shelby G. Hapeshis, Esquire #74731
HUFF AND HAPESHIS, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232 telephone
**Attorneys for Advanced Glassfiber Yarns, Inc.,
Employer and Great American Alliance Ins.,
Carrier, Appellants**



E. Ros Huff, Jr.
roshuff@huffandhapeshis.com

HUFF & HAPESHIS^{LLC}
ATTORNEYS AT LAW

Shelby G. Hapeshis
shapeshis@huffandhapeshis.com

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SC Court of Appeals

Jenny Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

Re: Tyrone Lawrence, Employee, Claimant, Respondent v. Advanced Glassfiber Yarns, Inc.,
Employer, and Great American Alliance Insurance Co., Carrier, Appellants.
Appellate Case No. 2016-002296

Dear Honorable Kitchings:

Please find enclosed herewith the Initial Reply Brief of the appellants with a Proof of Service

By copy of this letter, I am hereby serving Tyrone Lawrence, through his counsel, William L. Smith, II. If you have any questions, please do not hesitate to contact me.

Sincerely,

E. Ros Huff, Jr.
Shelby G. Hapeshis
Huff & Hapeshis, LLC

ERHjr/ea

Enclosure

cc: William L. Smith, II, Esquire
Amy Bracy, SCWCC

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