

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2015-001862

Sandy Chamblee, Appellant,

v.

Anderson County Fire Department, Employer, and State Accident Fund, Carrier,
Respondents.

**RESPONDENTS' RETURN TO
PETITION FOR REHEARING**

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JUN 23 2017

SC Court of Appeals

On May 24, 2017, this Court issued an Opinion, affirming the August 5, 2015, Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission. Unpublished Op. No. 2017-UP-215 (S.C.Ct.App. filed May 24, 2017). Appellant filed a Petition for Rehearing with this Court on June 8, 2017, asserting that this Court overlooked or misapprehended issues in affirming the Decision and Order of the Appellate Panel. Respondents respectfully submit this Return to Appellant's Petition for Rehearing.

ARGUMENTS

- a. THE COURT OF APPEALS PROPERLY FOUND THAT THE ISSUE OF WHETHER THE COMMISSION ERRED IN ALLOWING TESTIMONY RELATED TO WHEN APPELLANT NOTIFIED THE EMPLOYER OF HER ALLEGED ACCIDENT WAS NOT PROPERLY PRESERVED FOR APPELLATE REVIEW. EVEN ASSUMING, ARGUENDO, THAT THIS ISSUE WAS PRESERVED FOR REVIEW, AND EVEN ASSUMING THAT APPELLANT NOTIFIED THE EMPLOYER OF HER ALLEGATIONS ON MAY 26, 2011, THERE IS STILL SUBSTANTIAL EVIDENCE TO SUPPORT THE COURT'S AFFIRMATION OF THE APPELLATE PANEL ON OTHER GROUNDS.

Firstly, Appellant has not preserved this argument for appellate review, and the Court of Appeals properly found as much. Appellant did not object to any of the proffered testimony or Exhibits during the hearing held before the Single Commissioner, nor did Appellant object to the consideration of any of the evidence by the Single Commissioner. If Appellant believed the testimony and evidence was improper, an objection must have been made in order to preserve the issue for appellate review. S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (holding that to be preserved for appellate review, an issue must have been "(1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity"). As Appellant never raised any objection to the testimony and evidence that she now asserts was improperly considered, she cannot raise the issue for the first time on appeal.

To get around the fact that the issue was not preserved for Appellate review, Appellant now argues that "...the importance of when the Appellant first complained of an injury at work due to smoke inhalation on May 26, 2011, did not arise until the Hearing

Commissioner ... ruled against her claim...” (Petition for Rehearing, p. 3) Appellant argues that there was a First Report of Injury on file with the Commission which “was unchallenged and could be relied upon by the Appellant” until the Single Commissioner issued an Order. *Id.* She therefore argues that she did not need to raise the issue to preserve it for appellate review, as the importance of the issue was not discovered until after the Single Commissioner’s Order.

The issue of when Appellant first complained of a work injury was specifically raised and litigated during the Single Commissioner Hearing, and it is plainly evident that the importance of the issue was fully appreciated at all times during the litigation of the claim. Appellant provided testimony regarding this very issue, and Respondents called multiple witnesses to provide testimony regarding the issue as well.

At her deposition, Appellant testified that she reported her alleged work incident to Larry Greer, Jr. on May 26, 2011. At the Single Commissioner hearing, Mr. Greer testified that he did not recall Appellant reporting the incident to him at all. Appellant testified at the hearing that she reported the incident to Patty Ellison, a secretary at the Fire Department, on May 26, 2011. Appellant failed to testify at her deposition that she reported the incident to Patty Ellison, and she testified at the hearing that she simply forgot about Patty Ellison during her deposition. Appellant did not call Patty Ellison to testify at the hearing to corroborate her allegations.¹

Respondents called Jimmy Sutherland to testify at the hearing. Mr. Sutherland testified he is the Fire Chief of the Anderson County Fire Department. Mr. Sutherland was the Assistant Chief on May 26, 2011. Mr. Sutherland reviewed the First Report of Injury.

¹ Respondents also did not call Patty Ellison to testify. However, prior to Appellant’s hearing testimony, Respondents had no knowledge of Appellant’s allegation that she had reported the incident to Patty Ellison, as Appellant failed to mention Ms. Ellison during Appellant’s deposition.

Mr. Sutherland testified that the manner in which the First Report of Injury Form is completed is that an injured worker calls the insurance carrier directly, and the insurance carrier fills out the form over the phone based on the information provided by the injured worker. Mr. Sutherland testified that no employee of the Fire Department fills out the first report, and the hearing was the first time he had ever seen the report.

Respondents also called Timothy Dickson to testify at the hearing. Mr. Dickson was a fire marshal on May 26, 2011, and he was Appellant's direct supervisor at that time. Mr. Dickson testified that Appellant texted him on June 20, 2011, and asked that he call her, and Mr. Dickson testified he called Appellant on the evening of June 20, 2011. Mr. Dickson testified at the hearing that the telephone conversation with Appellant on June 20, 2011 was the first time he was aware that Appellant was alleging she was having problems from the smoke incident on May 26, 2011.

As outlined above, multiple witnesses provided testimony regarding the specific issue of when Appellant first complained of a work injury, and this specific fact was a primary focus of the hearing testimony. Perhaps even more telling is the fact that Appellant included a copy of the First Report of Injury in her APA Submissions for the Single Commissioner hearing. The First Report of Injury is already part of the Commission's file and will be made part of the record, yet Appellant knew that the issue of when Appellant first reported her alleged injury was of importance, so she opted to include the First Report of Injury in her Submissions. Appellant's allegation that the importance of this issue did not arise until *after* the Single Commissioner issued a Decision and Order is meritless, and there was no error in the Court of Appeals' affirmation of the Workers' Compensation Commission.

Secondly, it is of no consequence *when* Appellant actually reported the alleged accident. *The Commission made no Findings of Fact or Conclusions of Law related to the date Appellant reported the accident, clearly indicating that the reporting date had no bearing on the decision.* The fact of the matter is that substantial evidence exists in the record to support the Commission's findings, and regardless of when Appellant first reported the alleged incident, the medical evidence does not support her claim. Whether Appellant reported the incident on May 26 or June 20, 2011, the medical evidence makes clear that Appellant's condition is unrelated to an alleged smoke exposure on May 26, 2011, and substantial evidence exists to support the Commission's Order, and this Court's affirmation of the same.

b. SUBSTANTIAL EVIDENCE SUPPORTS THE APPELLATE PANEL'S FINDING THAT APPELLANT DID NOT SUSTAIN A COMPENSABLE INJURY BY ACCIDENT OR AGGRAVATION OF HER PREEXISTING ASTHMA CONDITION ON MAY 26, 2011.

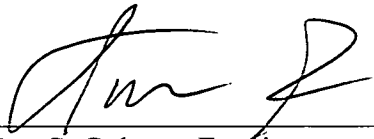
As Appellant has chosen to rely on her previously submitted arguments with regard to this issue, Respondents will do the same. In addition, Respondents note that a Petition for Rehearing "...shall state with particularity the points supposed to have been overlooked or misapprehended by the Court," and Appellant has failed to cite any specific points in her Petition for Rehearing with regard to this issue. Rule 221(a), SCACR. As a determination of this issue is dispositive of the claim and Appellant has failed to raise any specific points supposed to have been overlooked or misapprehended by the Court, Respondents contend the Petition for Rehearing must be denied.

CONCLUSION

For the reasons stated above, Respondents respectfully request an Order denying Appellant's Petition for Rehearing.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

By: 

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Attorneys for Respondents

June 19, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2015-001862

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Sandy Chamblee, Appellant,

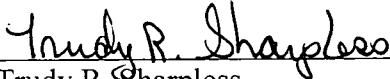
v.

Anderson County Fire Department, Employer, and State Accident Fund, Carrier,
Respondents.

PROOF OF SERVICE

I, Trudy R. Sharpless, certify that I have served a copy of the **Respondents' Return to Petition for Rehearing** on Appellant, Sandy Chamblee, by depositing a copy of the same in the United State Mail on June 19, 2017, with sufficient postage affixed thereto and return address clearly marked, addressed to her attorney of record, Richard E. Thompson, Jr., Esquire, Thompson & King Law Firm, P.O. Box 14230, Anderson, SC 29624. I also served the **Respondents' Return to Petition for Rehearing** by depositing the original and six copies in the United States Mail, postage prepaid, on June 19, 2017, addressed to Jenny Abbott Kitchings, Clerk of Court, The South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina, 29211.

June 19, 2017



Trudy R. Sharpless
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June 19, 2017

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Sandy Chamblee vs. Anderson County Fire Department
Appellate Case No. 2015-001862
WCC File No.: 1107022 DOI: 5/26/2011
Carrier: State Accident Fund - Claim No.: 2011-1885
WJC&B File No.: 0385.01033

Dear Ms. Kitchings:

Enclosed for filing are the original and seven (7) additional copies of the Respondents' Return to Petition for Rehearing in this case, along with a Proof of Service. Please file the original and six (6) copies, and return one (1) clocked copy to me in the enclosed, self-addressed stamped envelope. Thank you very much for your assistance in this matter.

By copy of this letter and enclosure to Richard E. Thompson, Jr., counsel of record for Appellant, I am serving him with a copy of the Respondents' Return to Petition for Rehearing, as indicated by the enclosed Proof of Service.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


Ian C. Gohean

Enclosures

cc: Mr. Richard E. Thompson, Jr.
Ms. Sandra Sita
South Carolina Workers' Compensation Judicial Department