

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

RECEIVED

JUL 28 2017

Appellate Case No.: 2015-001336
Unpublished Opinion No. 2016-UP-127

SC Court of Appeals

Jose Juan Jimenez, Employee, Appellant,

v.

Kohler Company, Self-Insured Employer, Respondent.

RETURN TO PETITION FOR REHEARING

Grady L. Beard
Nicolas L. Haigler
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(803) 929-1400

Attorneys for Respondent

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Kohler Company (Respondent) submits this Return to Appellant's Petition for Rehearing. For the reasons set forth herein, Appellant's Petition for Rehearing should be denied.

This Court affirmed the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission (Appellate Panel) that the claimant failed to establish that his current injuries to his low back/left leg are causally related to injuries by accident arising out of and in the course of employment on July 14, 2011, or March 13, 2012, pursuant to South Carolina Code section 42-1-160. This Court also affirmed that the Appellate Panel's Decision and Order stated sufficient Findings of Fact and Conclusions of Law to afford the claimant judicial review.

The claimant now advances two arguments in support of his Petition that were allegedly overlooked or misapprehended by the Court. First, the claimant contends the Commission erred when it failed to find he suffered an "injury by accident" under section 42-1-160 of the South Carolina Code. (Pet. for Reh'g 2). The claimant asserts the basis for the Appellate Panel's ruling was that after the accident and initial medical treatment, the claimant delayed in pursuing additional medical treatment. According to the claimant, such a delay would not affect his accident falling under the definition of "injury by accident" under section 42-1-160 of the South Carolina Code. (Pet. for Reh'g 2). This is a misunderstanding of the Respondent's argument and this Court's ruling. It is undisputed that the claimant twice reported that he had back tightness or soreness on two different days at work, separated by approximately eight months of time. Each incident resulted only in a visit to the on-site nurse and the creation of an incident report. The Respondent never argued they did not have notice of incidents on the two days in question. Instead, the Respondent contends the body parts for which the claimant sought compensation –

the back and leg(s)—were not causally related to any injury by accident under South Carolina Code section 42-1-160. Throughout the hearing and this appeal, the Respondent has maintained there was no credible evidence establishing that the claimant's two complaints of minor soreness for which he did report were causally related to the claimant's herniated disc/degenerative disc disease for which he seeks workers' compensation benefits. The Court considered this argument and cited to the appropriate standard of review and quoted language from *Clade v. Champion Labs*, 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998) holding the burden was on the claimant to prove facts that make the injury compensable and that "such award must not be based on surmise, conjecture[,] or speculation." The Court did not overlook or misapprehend the claimant's argument – it simply concluded the claimant did not meet his burden of proof that he suffered compensable events from his two minor complaints and affirmed the decision of the Commission.

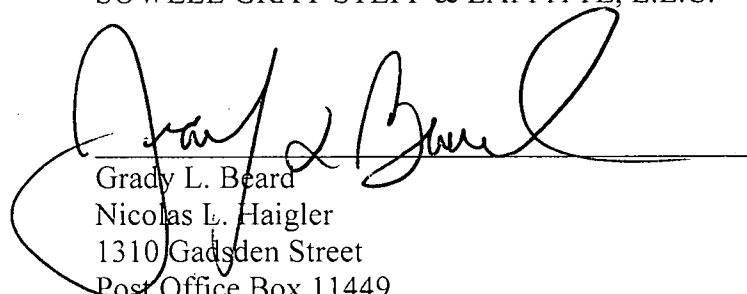
Second, the claimant contends the Commission erred in providing conclusory Findings of Fact and Conclusions of Law. (Pet. for Reh'g 3). According to the claimant, because the Appellate Panel's Order did not provide reasons for the amendments to the Hearing Order, the Court cannot determine whether the amended Findings are adequately supported by the facts. (Pet. for Reh'g 4). The claimant cites to section 42-17-50 of the South Carolina Code for the proposition that the Appellate Panel was required to articulate the basis for its amendments of the Single Commissioner's Order. (Pet. for Reh'g 4). However, nothing in section 42-17-50 requires that of the Appellate Panel. Section 42-17-50 states "the commission shall review the award and, if good grounds be shown therefore, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award." That language does not require that the Appellate Panel list in its order the grounds for making any amendments to the Single Commissioner's Order. Furthermore, the Appellate Panel properly affirmed and adopted the

Hearing Commissioner's recitation of the facts, and then identified its own Findings of Fact and Conclusions of Law which addressed the issues necessary for this Court to conduct an appellate review. Its citation to *Canteen v. McLeod Reg'l Med. Ctr.*, 400 S.C.551, 558-59, 735 S.E.2d 246, 250 (Ct. App. 2012) indicates that it did sufficiently consider this issue and did not misapprehend or overlook the claimant's argument.

This Court did not overlook or misapprehend the law or facts in this case as alleged by the claimant. Rather, this Court applied the facts to the well-established law and properly affirmed the Decision and Order of the Appellate Panel. The claimant's Petition for Rehearing is therefore without merit and should be denied.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.



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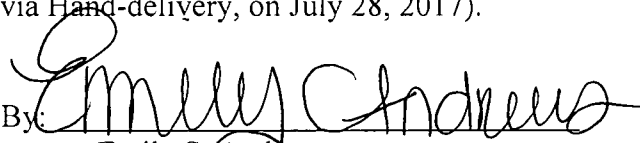
v.

Kohler Company, Self-Insured Employer, Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's Return to Petition for Rehearing, by depositing a copy in the United States Mail, postage prepaid, on July 28, 2017, addressed to all counsel of record, Alton L. Martin, Esquire, Post Office Box 8220, Greenville, SC 29604 and Honorable Jenny Abbott Kitchings, Judicial Director, South Carolina Court of Appeals, 1015 Sumter Street, Columbia, SC 29201 (via Hand-delivery, on July 28, 2017).

By:



Emily S. Andrews
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Post Office Box 11449
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July 28, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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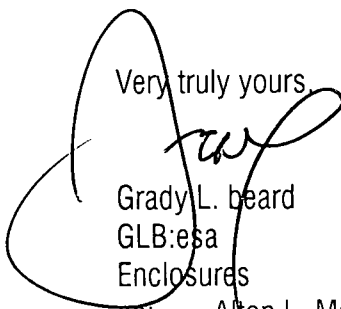
RE: Jose J. Jimenez v. Kohler Company
WCC File No.: 1219561
Date of Accident: 03/13/12
Claim No.: 186492343-001
Appellate Case No.: 2015-001336
Our File No.: 6457/8006

Dear Ms. Kitchings:

Please find enclosed herewith the original and six (6) copies of the Return to Petition for Rehearing in the above-referenced matter. We would appreciate your filing the original and six (6) copies. Please return a clocked-in copy of the same to us via our courier.

By copy of this letter, we are hereby serving a copy of the attached document upon counsel for the claimant.

Very truly yours,


Grady L. beard
GLB:esa
Enclosures

cc: Alton L. Martin, Esquire (via U.S. Mail)
Mr. Mike Tolleson (via e-mail only)
Mr. Dean Yagodinski (via e-mail only)
Ms. Brenda Gay (via email)
Ms. Staci McCaffrey (via e-mail only)