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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

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

WCC File No. 1413546
Appellate Case No. 2016-002294

Timothy McDuffie, Employee, Claimant, Respondent,

v.

Johnson Food Services, LLC, Employer, and Great American Alliance Insurance Co./Strategic
Comp., Carrier, Appellants.

FINAL REPLY BRIEF OF APPELLANTS

August 1, 2017

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

ARGUMENTS

The Commission erred in awarding temporary total disability benefits to the Claimant when the issue was not raised or pled. All parties are entitled to be given 30 days' notice of a hearing regarding the issues being litigated. The issues to be litigated and heard are joined by the filing of a SCWCC Form 50, Employee's Notice of Claim and/or Request for Hearing and SCWCC Form 51, Employer's answer to Request for Hearing.

The issues to be litigated are formed by the filing of the SCWCC Form 50 and SCWCC Form 51. The SCWCC Hearing Notice informs the parties of the issues to be addressed at the hearing. The parties are given this notice regarding the issues to be litigated so they can be prepared to present evidence and legal arguments which includes witness testimony and documents.

Because the SCWCC Form 50 did not raise the issue of or request payment of temporary total disability, the employer/carrier did not bring nor present a witness to address payment of temporary benefits. The SCWCC Hearing Notice dated September 3, 2015 gave the employer/carrier notice that the subject of the hearing was "To determine the issues as set forth on Forms 50 and 51". Upon review of SCWCC Form 50 and the hearing notice the employer/carrier were not given notice that they needed to present witnesses or documented evidence/exhibits to address temporary total disability payments.

SCWCC Reg. 67-603(B) provides "The employer's attorney shall fully state its position and defenses, if any, replying to each specification in the Form 50". SCWCC Reg. 67-603(E)

states a Form 51 must describe with as much specificity as possible the defenses to be relied upon by the defendants.

Pursuant to SCWCC Reg. 67-611 the parties are required to submit to the SCWCC Pre-hearing Briefs setting forth the issues to be addressed at the hearing. Temporary total disability was not raised in violation of this regulation. SCWCC Reg. 67-207, requires the Form 50 be completed and served so as to put the parties on notice of the issues to be addressed at the hearing. The claimant's Form 50 in this claim did not request nor seek payment of temporary total disability.

The first mention of the issue of payment of temporary total disability was its inclusion in the Order of Commissioner Aisha G. Taylor filed May 16, 2016. Since the issue of temporary total disability was neither pled nor raised, defendants were unable to cross examine the claimant on the spot without preparation or conferring with our client. They were not afforded the opportunity to prepare for cross examination or present documented evidence.

The Commission also erred in ordering medical treatment to be provided by Dr. C. Mazoue. The claimant's left knee condition was denied and therefore no medical treatment was provided. Once the left knee was ruled to be a part of the claim and the appellant was required to provide medical treatment pursuant to McKinney and SCWCC § 42-15-60 they have the right to choose the medical providers. *McKinney v. Kimberly Clark Corp*, 658 S.E.2d 112 (App. 2008). It is only after the Commission order that they must provide treatment. Once it became the law of the case requiring the appellant to provide the medical treatment at that point pursuant to McKinney they direct medical treatment. Why would the appellant direct medical treatment before that date regarding any alleged body part (leg) that was denied?

CONCLUSION

Based on the above cited arguments, the Defendants would respectfully request that the Order of South Carolina Workers Compensation Appellate Panel be reversed regarding payment of temporary total disability and the appointment of treating physician.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "E. Ros Huff, Jr.", is written over a horizontal line.

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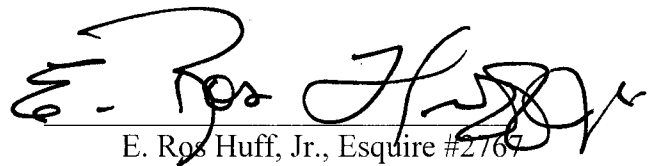
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CERTIFICATE OF COUNSEL

In compliance with Rule 211 (b), the Final Reply Brief of Appellants is identical to the
Brief previously served under Rule 208.

August 1, 2017



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