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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

WCC File No. 1310882

Appellate Case No. 2016-002296

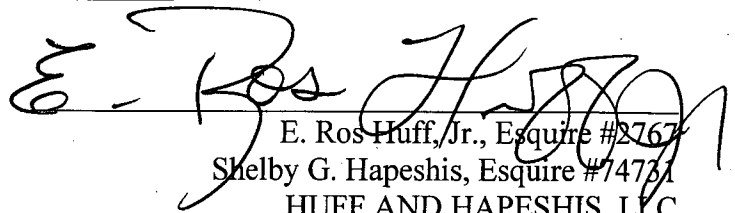
Tyrone Lawrence, Employee, Claimant, Respondent,

v.

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

FINAL REPLY BRIEF OF APPELLANTS

June 30, 2017



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SC Court of Appeals

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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. (R. Vol. I p. 127 lines 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. (R. Vol. I p. 20). 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.

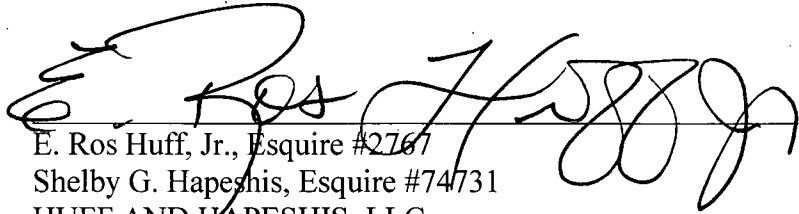
The SC Workers' Compensation Commission committed an error of law when appointing Dr. Poletti as the authorized treating physician. The claimant's attorney contends that

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,



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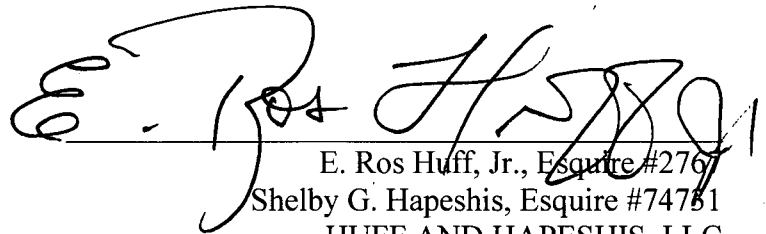
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Appellants.

CERTIFICATE OF COUNSEL

In compliance with Rule 211, the Appellant's Final Reply Brief is identical to the brief previously served under Rule 208 with the exception that it now contains references to the record.

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