

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C FILE NO: 1020999

Mattie Wilson,)
Employee,)
Claimant,)
vs.)
Directory Distributing Assoc. Inc.,)
Employer,)
Ace American Insurance Company,)
Carrier,)
and)
Gallagher Bassett Services,)
Third-Party Administrator,)
Defendants.)

DECISION AND ORDER

RECEIVED
JAN 18 2018
SC Court of Appeals

DATE OF HEARING: Hearing held in Greenville, SC on May 9, 2017.

APPEARANCES: Claimant was unrepresented.

Defendants represented by Walter R. Frye, III, Esq. of Greenville, South Carolina.

PURPOSE OF HEARING: To determine whether Claimant sustained a compensable injury and whether Claimant is entitled and/or Employer responsible for medical or indemnity benefits.

COMMISSIONER: Commissioner T. Scott Beck

FILED: July 7, 2017

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and regulations of the South Carolina Workers' Compensation Commission, the following records and documents were submitted into evidence:

Defendants submitted the following:

- A. Copy of the Commission's file.
- B. Memorandum of Law.

Claimant submitted the following:

Claimant did not submit any documents or exhibits.

STIPULATIONS

The parties stipulated at the hearing to the following:

- 1. Notice of the hearing was timely and properly served upon all parties of interest;
- 2. The South Carolina Workers' Compensation Commission has jurisdiction of this claim;
- 3. Venue is proper in Greenville, South Carolina;
- 4. The date of the alleged incident was October 20, 2010;
- 5. That an employer-employee relationship existed between the Claimant and Employer Defendant at the time of the alleged incident; and
- 6. Claimant's average weekly wage was \$158.55 with a corresponding compensation rate of \$105.71.

STATEMENT OF THE CASE

The purpose of the hearing is to determine issues raised in Claimant's Form 50 and Defendants' Form 51. This claim was previously scheduled for a hearing before Commissioner Susan S. Barden on January 20, 2017, but was continued at Claimant's request for additional time to retain counsel and an Order granting same was issued on February 28, 2017. Claimant did not obtain counsel. Claimant

appeared pro se, and Defendants appeared represented by Walter R. Frye, III. Claimant requested a hearing to determine if she sustained a compensable injury and whether Claimant is entitled to and/or Employer is responsible for medical or indemnity benefits. Defendants denied the claim based on Statute of Limitations in addition to other defenses. A pre-hearing conference and a hearing were held before this Commissioner.

EVIDENCE OF THE CASE

Pursuant to the Workers' Compensation Commission File, Defendants filed a Form 12A, First Report of Injury with the Commission on October 26, 2010, indicating that Claimant was involved in a motor vehicle accident on or about October 18, 2010 while working as a seasonal delivery carrier for employer Directory Distributing Associates. Defendants then filed a Form 20, Statement of Earnings, on March 22, 2011, indicating that Claimant had an average weekly wage of \$158.55 with a corresponding compensation rate of \$105.71. The claim was closed with the Commission on March 5, 2013, after receipt of a Form 19 the previous day on March 4, 2013. The first Form 50 filed by Claimant was on November 3, 2016. A timely Form 51 was filed by Defendants on November 17, 2016 denying Claimant's claim.

This claim was initially scheduled for a hearing on January 20, 2017, before Commissioner Susan S. Barden in Greenville, South Carolina. Pursuant to the Order filed by Commissioner Barden on February 28, 2017, Claimant appeared pro se and Defendants were represented by counsel and a pre-hearing conference was held with all parties. At the pre-hearing conference, Claimant requested the hearing be continued as she desired to obtain counsel prior to a hearing. Commissioner Barden found Claimant's request to be reasonable and continued the matter to allow Claimant to obtain counsel.

This matter was then reset for a hearing on May 9, 2017 before the undersigned in Greenville, South Carolina. Claimant did not submit a Pre-Hearing Brief or APA Submissions. Defendants submitted a copy of the Commission's file presenting any and all forms previously submitted to the Commission. Defendants also submitted a Memorandum of Law in support of their denial of the claim

as the statute of limitations had run wherein it is noted that Section 42-15-40 of the South Carolina Code (Supp. 2007) states that the "right to compensation under this Title is barred unless a claim is filed with the Commission within two years of an accident." Claimant does not present any evidence showing a claim was filed within two years of her accident. Claimant was aware that she sustained an injury at work and does not proffer any evidence that would support tolling of the statute of limitations. Claimant has not alleged any previously unknown injuries or diagnoses only recently correlated to a workplace accident. Claimant has simply filed a claim noticing the injuries which were previously denied. Likewise, Claimant was provided treatment on the day of the accident, prior to a denial, which Defendants concede may support tolling the statute for one day, but does not support tolling the statute anywhere near the amount of time necessary for the present claim to remain viable. Therefore, Claimant does not fall within the statute of limitations exceptions as set out in the relevant caselaw.

Defendants also contend that the doctrine of laches further bars Claimant's suit. In the claim at hand, Claimant failed to notice a claim for almost six years and a Form 19 closed the claim approximately three years before her filing. No action to contest the denial was undertaken by Claimant until her hearing request in 2016 and in addition to her failure to satisfy the statute of limitations, her claim is equitably barred for failure to prosecute.

Did not help me present keep talking mainly with Defendant.

During the pre-hearing conference and during the hearing Claimant presented no evidence to indicate that a claim was filed with the Commission prior to the two-year statute of limitations or that the statute of limitations should be tolled for any reason. Claimant argued to the undersigned that she had attempted to file a civil lawsuit against the other driver of the car, which was dismissed for lack of jurisdiction, and that she was a class member in a class-action lawsuit regarding wage and labor violations against the defendant employer Directory Distributing Associates and AT&T; however, the undersigned did not find these arguments persuasive to notice a timely workers' compensation claim with the Commission or toll the statute of limitations in this matter and are not supported by either the Act or caselaw.

Statute of Limitations Court tolled Supreme Court tolled it.

were on were not employees

Supreme Court

FINDINGS OF FACT

1. The purpose of the hearing was to determine the issues set forth in the Hearing Notice and Forms 50 and 51, and any other matters which may have timely come before the undersigned Commissioner.

2. The Notice of Hearing was timely and properly served upon all parties of interest.

3. The Claimant's compensation rate is \$105.71 based upon an average weekly wage of \$158.55.

4. Venue for this matter is proper in Greenville, South Carolina.

5. The Claimant seeks compensation and benefits pursuant to the provision of the Act.

6. The South Carolina Workers' Compensation Commission has jurisdiction in this matter.

7. I find that based upon the Commission file, Claimant's injury occurred on or about October 18, 2010 and Claimant's first filing with the Commission noticing a claim was on November 3, 2016.

8. I find Claimant presented no evidence that a claim was noticed with the Commission prior to November 3, 2016.

9. I find Claimant's claim is barred pursuant to the two-year statute of limitations as set out in Section 42-15-40 of the South Carolina Code (Supp. 2007).

10. I find that Claimant presented no evidence that the statute of limitations was tolled.

11. I find that Claimant is also equitably barred from pursuing the matter due to the doctrine of laches.

12. I find that Claimant is barred from recovering any compensation or benefits under the Act.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code. Ann. §42-15-40 (1976), and other applicable law and regulation, the Claimant is not entitled to benefits or compensation under the Act for injuries sustained on or about

*proved
was filed
Wrong Dates*

X October 18, 2010 as her claim is barred by the statute of limitations for failing to file a claim within two (2) years from the date of accident. / *Did file Claim*

ORDER

IT IS, THEREFORE, ORDERED that this matter is dismissed with prejudice.

AND IT IS SO ORDERED.

Order served upon:

Mattie Wilson
239 A Elder Street
Greenville, SC 29607

Walter R. Frye, III, Esquire
Eller Tomnsen Bach
1306 S Church Street
Greenville, SC 2965



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

July 7, 2017

By: Shawnee DeBruhl, Administrative Assistant to Commissioner Beck