

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1501793

Rasia Clark

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

DMSI Holdings, Inc.

EMPLOYER,

AND

AIG

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on October 16, 2017 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

RECEIVED

MAR 26 2018

SC Court of Appeals

February 21, 2018

APPEARANCES: Claimant/Appellant represented by Sabrina Love-Sloan, Esquire

Defendants/Respondents represented by Kelly F. Morrow, Esquire

STATEMENT OF THE CASE

The parties were heard by the Single Commissioner on January 30, 2017. The Single Commissioner, in a Decision and Order dated May 12, 2017, determined that based on the substantial evidence, the Claimant sustained a compensable injury to the left wrist by work accident arising out of and in the course and scope of her employment with Defendants. Additionally, the Single Commissioner determined that the Claimant was only entitled to temporary total disability benefits from 2/19/15 – 03/26/15, based upon Dr. Henig's last medical note, which returned her to full duty two weeks after that visit on 03/12/15. Further, the Single Commissioner found that the Claimant took herself outside of the workers' compensation system; and, the Claimant was not entitled to payment for medical bills incurred by her own choice. The Order contained the following findings of fact; and, he issued the following Order:

FINDINGS OF FACTS

1. The Claimant alleges she sustained injuries to her left hand, left wrist, left elbow, and left upper extremity on 02/05/15 in a work-related accident arising out and within the course of her employment with Defendant DMSI.
2. Defendant DMSI denies the claim. They did, however, provide the Claimant with medical care and treatment for an event that occurred on 02/05/15. The Claimant ultimately saw Dr. Michael F. Heinig of Carolina Orthopaedic Surgery.
3. Dr. Heinig completed a Form 14B on 06/30/15 on which he opined that the Claimant had reached MMI as of 03/12/15.
4. Dr. Heinig assigned a 0% medical impairment rating to her left forearm.
5. Claimant testified with some frustration that Dr. Heinig had focused on her left elbow, but that her problem was in the left wrist.

6. Dr. Heinig also wrote that the Claimant would not need future medical care and that she could return to work without restrictions.

7. Claimant's employment with DMSI ended. It is the Claimant's contention that she was never provided light-duty work. DMSI maintains that the Claimant was a no call/no show and, as such, was terminated.

8. Claimant subsequently worked for Defendant Keer America. Claimant testified that she did not suffer any work-related injury to her left upper extremity while in the employ of Keer.

9. Claimant testified that her wrist has not gotten any better. She is very limited in what she can do with that arm. Specifically, she cannot lift anything of any weight.

10. Claimant testified that she made an appointment on her own and saw Dr. Alan Ward of OrthoCarolina for the first time on 12/21/15.

11. Dr. Ward's deposition has been taken in this matter and is part of the record. I have read that deposition in its entirety. Dr. Ward focuses on the Claimant's left wrist.

12. Dr. Ward sent the Claimant for an MRI of her wrist. It should be noted that Dr. Ward's interpretation of that MRI differs from the radiologist who performed it. The MRI report reads, "Negative MR arthrogram of the left wrist." Dr. Ward, however, testified that he had reviewed the MRI images himself after the imaging and again before his deposition. Of the MRI he testified, "I have had the benefit of being able to take a history and exam of the patient which the radiologist doesn't. But yes, I thought she had a TFC tear on several of her images."

13. Dr. Ward's medical note from 09/29/16 is in evidence. He writes in that note, "We would once again recommend proceeding with an arthroscopic TFC repair and possible debridement, as well as an ulnar shortening osteotomy and an ECU tendon sheath stabilization."

In his deposition testimony he causally relates all of these recommendations to the Claimant's work-related accident on 02/05/15.

14. When the evidence is viewed as a whole, I find that the Claimant did suffer a work-related injury to her left wrist arising out of and within the course and scope of her employment 02/05/15. There is an injury report in the record and the employer DMSI provided medical care and treatment to the Claimant.

15. While Defendant DMSI asserts a Geathers v. 3V, Inc. defense, there is no evidence in the record that the Claimant suffered any injury of any kind to her left upper extremity while in the employ of Defendant Keer America. (Geathers v. 3V, Inc., 371 S.C. 570, 641 S.E. 2D S.C. 2007). The Claimant is resolute in her testimony that her injury was on 02/05/15 while in the employ of Defendant DMSI. There is no evidence in the record that refutes that testimony.

16. As such, Keer America Corporation and its carrier, FCCII Insurance Group are dismissed from this claim.

17. There is competing testimony as to whether Defendant DMSI offered light-duty. Likewise, there is also competing testimony that the Claimant abandoned her employment with DMSI.

18. The Claimant is not a Native American English speaker.

19. While she seeks TTD from 02/19/15 – 05/14/15, I can only conclude that she is entitled to TTD from 02/19/15 – 03/26/15 which is based on Dr. Heinig's last medical note which returns her to full duty two weeks after that visit on 03/12/15.

20. There is no question that the Claimant took herself out of the workers' compensation system when she sought treatment with Dr. Ward on her own. There is no evidence in the record

that she sought additional medical treatment from either the employer DMSI or its carrier. Claimant is not entitled to payment for medical bills incurred by her own choice.

21. I am not persuaded that the Claimant is at MMI. She is to return to Dr. Heinig for an evaluation to see if she is currently at MMI. Dr. Heinig is to be provided all the medical evidence in this case for his review.

22. Dr. Heinig is to remain the authorized treating physician in this case. Should he determine that the Claimant is not at MMI, the Claimant will be entitled to any medical treatment he provides or directs. Claimant is also entitled to any diagnostic imaging that Dr. Heinig prescribes in making that determination.

23. All other issues are held in abeyance.

CONCLUSIONS OF LAW

Pursuant to Section 42-1-80 and Section 42-1-130 of the South Carolina Code of Laws Ann. (2015), the parties to these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.

1. A Claimant, who asserts the right to compensation, must establish by the preponderance of the evidence the facts which entitle her to an award under the Worker's Compensation Act. *See Lorick v. South Carolina Elec. & Gas Co.* 245 S.C. 513, 141 S.E. 2d 662 (S.C. 1965).

2. Pursuant to Section 42-1-130 and Section 42-1-140 of the South Carolina Code of Laws Ann. (2015), the Employee/Employer relationship existed on February 5, 2015.

3. Pursuant to Section 42-1-160 and Section 42-9-10 of the South Carolina Code of Laws Ann. (2015), the Claimant sustained a work related injury to her left wrist arising out of and in the course of her employment with Defendant DMSI on February 5, 2015.

4. The Claimant did not sustain an injury at Keer America Corporation and the Defendant DMSI's Geathers V. 3V Inc. argument is denied as there is no evidence in the record that the Claimant suffered any injury of any kind to her left wrist or upper extremity while in the course of employment with Keer America Corporation.

5. Defendant Keer America Corporation and its carrier FCCI Insurance Group are dismissed from this claim.

6. Pursuant to Section 42-15-60 of the South Carolina Code of Laws Ann. (2015), the Employer, DMSI, is responsible for payment of any and all authorized medical treatment, prescriptions, and mileage related to the injury of the Claimant's left wrist/left elbow.

7. The Claimant has not reached maximum medical improvement.

8. Claimant is entitled to further casually related medical treatment, as recommended by Dr. Heinig and/or any authorized treating physician, pursuant to Section 42-15-60 of the South Carolina Code of Laws Ann. (2015). Dr. Heinig shall be the authorized treating physician for the Claimant's injury to her left wrist until further determined otherwise by agreement or order of the Commission.

9. The Claimant is entitled to temporary total disability from February 19, 2015 through March 26, 2015, based upon Dr. Heinig's last medical note which returns the Claimant to full duty employment two (2) weeks after her last visit on March 12, 2015.

10. The Claimant is not entitled to reimbursement of causally related medical treatment that she sought on her own. There is no evidence in the record that she sought additional medical treatment from her employer, DMSI, or its carrier, AIG.

11. The Defendant shall provide an evaluation with Dr. Heinig to determine whether the Claimant has now reached maximum medical improvement or is in need of further treatment

or care as a result of her February 5, 2015 injury.

12. All other issues are held in abeyance until further order of the Commission or agreement of the parties.

ORDER AND AWARD

Based on the above findings of fact and conclusions of law, it is hereby:

ORDERED the Claimant sustained a work related injury to her left wrist arising out of and in the course of her employment with Defendant DMSI on February 5, 2015.

IT IS FURTHER ORDERED that the Claimant did not sustain an injury of any kind to her left wrist while in the course of employment with Keer America Corporation. Therefore, Defendant Keer America Corporation and its carrier FCCI Insurance Group are dismissed from this action.

IT IS FURTHER ORDERED that Defendants, DMSI and AIG, are responsible for any and all authorized medical treatment, prescriptions, and mileage related to the injury of the Claimant's left wrist/left elbow.

IT IS FURTHER ORDERED that I am not convinced that the Claimant has reached maximum medical improvement. Therefore, Defendant DMSI should provide casually related medical treatment as recommended by Dr. Heinig and or any other authorized treating physician.

IT IS FURTHER ORDERED the Defendant, DMSI shall pay temporary total disability from February 19, 2015 through March 26, 2015.

IT IS FURTHER ORDERED that the Defendant DMSI shall provide an evaluation with Dr. Heinig of Carolina Orthopaedic for him to determine if any further treatment is

warranted to the left wrist.

IT IS FURTHER ORDERED that all other issues are held in abeyance or premature at this time.

AND IT IS SO ORDERED.

ISSUES ON APPEAL

The Claimant filed a Request for Commission Review on or around May 24, 2017. On the Form 30, the Claimant raised twelve grounds for appeal. However, in the Appellant's Brief, the Claimant narrowed the issues for appeal down to two issues. First, the Claimant alleged that the Single Commissioner erred in finding and concluding as a matter of law that there was no evidence in the record that the Claimant sought additional medical treatment from either the Employer DMSI or its carrier, when the preponderance of the evidence showed that the Claimant was refused medical treatment by Defendants beyond April 2015. Second, the Claimant asserted that the Single Commissioner erred in finding and concluding as a matter of law that the Claimant was not entitled to temporary total disability benefits from March 27, 2015 to May 15, 2015, when the preponderance of the evidence showed that the Claimant was terminated by the Employer while she was on light duty.

Conversely, Defendants maintained that the Single Commissioner properly determined that the Claimant did not request additional medical treatment; therefore, they were not responsible for any out-of-pocket expenses incurred by Claimant in seeking medical treatment with Dr. Ward, whom she selected on her own. Moreover, Defendants asserted that the Claimant was not entitled to temporary benefits for the period encompassing March 27, 2015 to May 15, 2015. All proffered testimony has been taken. Such, together with all documentary evidence,

has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

Based upon a review of the foregoing, we enter the following findings of fact and conclusions of law:

APPELLATE FINDINGS OF FACT

1. The Claimant alleges she sustained injuries to her left hand, left wrist, left elbow, and left upper extremity on 02/05/15 in a work-related accident arising out and within the course of her employment with Defendant DMSI.
2. Defendant DMSI denies the claim. They did, however, provide the Claimant with medical care and treatment for an event that occurred on 02/05/15. The Claimant ultimately saw Dr. Michael F. Heinig of Carolina Orthopedic Surgery.
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6. Dr. Heinig also wrote that the Claimant would not need future medical care and that she could return to work without restrictions.
7. Claimant's employment with DMSI ended. It is the Claimant's contention that she was never provided light-duty work. DMSI maintains that the Claimant was a no call/no show and, as such, was terminated.
8. Claimant subsequently worked for Defendant Keer America. Claimant testified that she did not suffer any work-related injury to her left upper extremity while in the employ of Keer.

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11. Dr. Ward's deposition has been taken in this matter and is part of the record. We have read that deposition in its entirety. Dr. Ward focuses on the Claimant's left wrist.

12. Dr. Ward sent the Claimant for an MRI of her wrist. It should be noted that Dr. Ward's interpretation of that MRI differs from the radiologist who performed it. The MRI report reads, "Negative MR arthrogram of the left wrist." Dr. Ward, however, testified that he had reviewed the MRI images himself after the imaging and again before his deposition. Of the MRI he testified, "I have had the benefit of being able to take a history and exam of the patient which the radiologist doesn't. But yes, I thought she had a TFC tear on several of her images."

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14. When the evidence is viewed as a whole, we find that the Claimant did suffer a work-related injury to her left wrist arising out of and within the course and scope of her employment 02/05/15. There is an injury report in the record and the employer DMSI provided medical care and treatment to the Claimant.

15. While Defendant DMSI asserts a Geathers v. 3V, Inc. defense, there is no evidence in the record that the Claimant suffered any injury of any kind to her left upper extremity while in the

employ of Defendant Keer America. (Geathers v. 3V, Inc, 371 S.C. 570, 641 S.E. 2D S.C. 2007).

The Claimant is resolute in her testimony that her injury was on 02/05/15 while in the employ of Defendant DMSI. There is no evidence in the record that refutes that testimony.

16. As such, Keer America Corporation and its carrier, FCCII Insurance Group are dismissed from this claim.

17. There is competing testimony as to whether Defendant DMSI offered light-duty. Likewise, there is also competing testimony that the Claimant abandoned her employment with DMSI.

18. The Claimant is not a Native American English speaker.

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20. There is evidence that Claimant refused authorized medical treatment provided by the Employer and its carrier. Claimant is not entitled to payment for medical bills incurred by her own choice.

21. We are not persuaded that the Claimant is at MMI. She is to return to Dr. Heinig for an evaluation to see if she is currently at MMI. Dr. Heinig is to be provided all the medical evidence in this case for his review, including, but not limited to Dr. Ward's opinion of TFC tear.

22. Dr. Heinig is to remain the authorized treating physician in this case. Should he determine that the Claimant is not at MMI, the Claimant will be entitled to any medical treatment he provides or directs. Claimant is also entitled to any diagnostic imaging that Dr. Heinig prescribes in making that determination.

23. All other issues are held in abeyance.

CONCLUSIONS OF LAW

Pursuant to Section 42-1-80 and Section 42-1-130 of the South Carolina Code of Laws Ann. (2015), the parties to these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.

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2. Pursuant to Section 42-1-130 and Section 42-1-140 of the South Carolina Code of Laws Ann. (2015), the Employee/Employer relationship existed on February 5, 2015.

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4. The Claimant did not sustain an injury at Keer America Corporation and the Defendant DMSI's Geathers V. 3V Inc. argument is denied as there is no evidence in the record that the Claimant suffered any injury of any kind to her left wrist or upper extremity while in the course of employment with Keer America Corporation.

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7. The Claimant has not reached maximum medical improvement.

8. Claimant is entitled to further casually related medical treatment, as recommended by Dr. Heinig and/or any authorized treating physician, pursuant to Section 42-15-60 of the South Carolina Code of Laws Ann. (2015). Dr. Heinig shall be the authorized treating physician for the Claimant's injury to her left wrist until further determined otherwise by agreement or order of the Commission.

9. The Claimant is entitled to temporary total disability from February 19, 2015 through March 26, 2015, based upon Dr. Heinig's last medical note which returns the Claimant to full duty employment two (2) weeks after her last visit on March 12, 2015.

10. The Claimant is not entitled to reimbursement of causally related medical treatment that she sought on her own. There is evidence that Claimant refused authorized medical treatment provided by the Employer and its carrier.

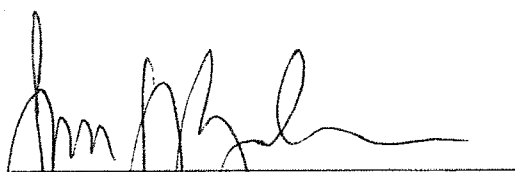
11. The Defendant shall provide an evaluation with Dr. Heinig to determine whether the Claimant has now reached maximum medical improvement or is in need of further treatment or care as a result of her February 5, 2015 injury.

12. All other issues are held in abeyance until further order of the Commission or agreement of the parties.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this matter is **AFFIRMED WITH AMENDMENTS.**

SO ORDERED.



Commissioner Susan S. Barden
For the Appellate Panel

WE CONCUR:



Commissioner Avery B. Wilkerson



Commissioner B. Michael Campbell, II

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Valerie Deller on February 21, 2018