

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

W.C.C. FILE NO: 0818970

Latika Brown

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

The Pantry, Inc.

EMPLOYER,

AND

ACE American Insurance Company c/o Risk
Enterprise Management, Ltd.

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on October 23, 2012 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

APPEARANCES: Claimant/Appellant represented by Donald H. Howe, Esquire
Defendants/Respondents represented by Amanda A. Mellard

RECEIVED

DEC 27 2012

SC Court of Appeals

STATEMENT OF THE CASE

The parties were heard by Commissioner Gene McCaskill on April 20, 2012 in Columbia, South Carolina. On June 21, 2012, he issued the following Order:

IT IS HEREBY ORDERED that the greater weight of the evidence supports a finding that Defendants are entitled to repayment of their lien from the third party proceeds in full.

IT IS SO ORDERD.

Within the statutory period, counsel for Claimant filed an Application for Review in the case setting forth her reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on October 23, 2012. All proper 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 then understudy and consideration. By Appeal, Claimant respectfully submits the following:

1. In a situation in which the Claimant settled her third party court action for \$505,000.00 out of \$525,000.00 of available insurance coverage, did the Hearing Commissioner err in ruling that the Claimant, by failing to give prior written notice of the settlement to the carrier, thereby forfeited a right to reduce the lien of the carrier by an amount reasonable attorney's fees and expenses and principals of equity as provided in §42-1-560?
2. Did the Hearing Commissioner fail to properly apply the guidelines pronounced by the South Carolina Supreme Court in Kirkland v. Allcraft Steel, Co., 320 S.C. 289, 496 S.E. 2d 624 (1998) when he refused to reduce the lien of the Workers' Compensation Carrier by any amount?
3. Did the Hearing Commissioner err when he failed to follow the statutory language

of §42-1-560 and failing to provide for any amount of reasonable attorney's fees to be deducted from the amount of money ultimately awarded to the carrier for its lien?

4. Did the Hearing Commissioner err when he failed to reduce the amount of the Workers' Compensation carrier's lien by any amount based on the fact that no prior written notice was given to the carrier even though there was no prejudice to the carrier?
5. Did the Hearing Commissioner err in ruling that the third party settlement was "not the benefit of the carrier" pursuant to §42-1-560 despite the fact that he awarded the carrier \$219,486.90?
6. Did the Hearing Commissioner err when he failed to admit into evidence and consider medical evidence by Dr. Peter DeVito, a plastic surgeon, about future potential surgery available to the Claimant to improve her extensive scarring?

In an Appellant review, the Panel shall, pursuant to S.C. Ann. Code §42-17-50 (1985), review the award, weight the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Panel, by a majority vote, has determined all of the Hearing Commissioner findings of fact and rulings of law are correct as stated. Accordingly, they shall become and hereby are, the law of the case, and therefore, the Order is sustained in its entirety. The Panel finds as follows:

FINDINGS OF FACT

1. Based on the evidence submitted the parties, Claimant suffered admittedly compensable injuries as a result of an accident on November 19, 2008 for which she settled her claim as of March 11, 2011 with Defendants;

2. Based on the evidence submitted the parties, Claimant filed a third party action against the at-fault driver in June 2011 and settled that claim for \$505,000.00 in September 2011;
3. Based on the evidence submitted the parties, the policy limits available to Claimant were \$525,000.00;
4. Based on the evidence submitted the parties, Claimant did not obtain the written approval of Defendants prior to entering into the settlement with the third party as is required by statute;
5. Based on the evidence submitted the parties, Defendants have a lien totaling \$219,486.90 as a result of the Workers' Compensation claim filed by Claimant (File No. 0818970) on any third party proceeds;
6. Based on the evidence submitted the parties, Defendants seek repayment of their lien in full;
7. Based on the evidence submitted the parties, Jon Austen, as well as Edward Buckley, experts for both parties, agreed that Claimant's case for damages in civil court was very strong given her extensive injuries, lost time from work, and permanent injuries;
8. Based on the evidence submitted the parties, Jon Austen and Edward Buckley, experts for both parties, agreed that there was no question regarding third party liability;
9. Based on the evidence submitted the parties, Claimant did not present any evidence regarding reasonable justification as to why she did not obtain written approval from Defendants prior to entering into the settlement with the third party;