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SC Court of Appeals

APPELLATE PANEL DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1608009

ROBERT L. EVANS, EMPLOYEE, CLAIMANT/APPELLANT

vs.

AQUA SEAL MANUFACTURING & ROOFING
AND
BUILDERS MUTUAL INSURANCE COMPANY, DEFENDANTS/RESPONDENTS

Hearing: February 20, 2018
Columbia, South Carolina

Appearances: For the Claimant/Appellant:
Charles E. Johnson, Esquire of Charles E. Johnson, P.A., of Columbia, South Carolina

For the Defendants/Respondents:
George A. Taylor, Esquire, of Callison Tighe & Robinson
Columbia, South Carolina

Purpose of Hearing: Affirm the Decision and Order of the Single Commissioner

Decision and Order: By: The Honorable Michael Campbell
The Honorable Avery B. Wilkerson, Jr.
The Honorable T. Scott Beck

Filed: May 1, 2018

STATEMENT OF THE CASE

This matter came before the Appellate Panel of the South Carolina Workers' Compensation Commission on February 20, 2018, per notice timely and properly served on all parties of interest. The matter was initially heard before the Hearing Commissioner on August 4, 2017, in Columbia, South Carolina, pursuant to the Form 50, Employee's Request for Hearing, and Form 51 filed by the Defendants.

The issue before the Hearing Commissioner was whether the Claimant met his burden to prove he suffered a compensable injury by accident arising out of and in the course of his employment. The Claimant asserts in his appeal that the Hearing Commissioner erred in failing to find that the Claimant had a heat related incident on June 3, 2016 that aggravated and accelerated an unknown pre-existing condition of rhabdomyolysis. The Decision and Order of the Hearing Commissioner dated November 9, 2017, contains the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Claimant alleges that he suffered work-related rhabdomyolysis on June 3, 2016, arising out of and within the course and scope of his employment.

2. The Defendants deny the Claimant suffered a compensable injury by accident on June 3, 2016.

3. The Claimant worked as a roofer.

4. When the evidence is reviewed as a whole, there is no question that the Claimant had a heat-related incident on June 3, 2016.

5. The Claimant left work early due to the heat on both June 1, 2016 and June 2, 2016.

6. Defendants assert that the Claimant knew or should have known that he had this condition.

7. While there is clearly evidence that the Claimant has had previous heat-related episodes, the Claimant does not have a diagnosis of rhabdomyolysis until this event. There is no evidence in the record that the Claimant knew prior to this event that he suffered from rhabdomyolysis. Absent any evidence of an earlier diagnosis, it would require speculation on my part to conclude that he could or should have known. Rhabdomyolysis is a specific diagnosis which is different than heat exhaustion or dehydration.

8. A review of the medical records in evidence also shows that the Claimant has had other serious medical conditions that impact his general health.

9. The question at bar is one of compensability. By a preponderance of the evidence, does the Claimant now suffer from rhabdomyolysis as a result of the work-related events of June 3, 2016?

10. A letter in evidence from the Claimant's personal physician, Dr. Dean A. Floyd reads in part, "After talking with him and reviewing his hospital record, no discrete moment can be determined when he suffered an injury. He had a heat related illness which appeared to have resulted from a cauldron of chronic medical condition (HIV), medications and repeated heat exposure. How each contributed to his heat illness cannot be determined. It is the opinion of this examiner though that working on the roof top contributed to his acute illness." (Claimant's APA P. 35.)

11. In his deposition testimony, Dr. Floyd affirmed that his opinion cited above was still his opinion at the time of the deposition.

12. When asked, "Is there any way to medically assess the length of time that the repeated heat exposure took to result in or contribute to rhabdomyolysis?" Dr. Floyd's answer was, "There's no way we can do that." (Floyd Dep. Tr. 14:3-6.)

13. When the evidence is reviewed as a whole, the Claimant has not proven by a preponderance of the evidence that he suffered an injury by accident – rhabdomyolysis – on June 3, 2016. While the Claimant clearly suffers from this condition, he has not met his burden as to compensability set forth in the Act.

CONCLUSIONS OF LAW

Accordingly, as provided by S.C. Code Ann. § 42-17-40, it is hereby determined as a matter of law that:

1. Under Section 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.

2. Under Section 42-17-20 venue in Richland County, South Carolina, was proper and agreed to by the parties.

3. Under Section 1-23-320(b) and Regulation 67-607, notice of the hearing was timely and properly served upon all parties in interest.

4. Under Section 42-1-160, the Claimant has not met the burden of proving he suffered a compensable injury by accident arising out of an in the course of his employment.

5. The claim is dismissed with prejudice.

6. No hearing costs are assessed.

APPELLATE REVIEW

Pursuant to S.C. Code Ann. § 42-17-50, in an Appellate Review, the Appellant Panel shall review the award; and, if good grounds be shown, may reconsider the evidence, receive further evidence, rehear the parties and amend the award. The Appellate Panel may make its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 537, 324 S.E.2d 87, 89 (Ct. App. 1984).

After review of the Appellant and Respondents' briefs, review of the evidence of the case, and after hearing the oral arguments of counsel, the Appellate Panel of the Workers' Compensation Commission affirms the Order of the Single Commissioner in full and adopts the below additional Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AFFIRMED BY THE APPELLANT PANEL

1. The Claimant alleges that he suffered work-related rhabdomyolysis on June 3, 2016, arising out of and within the course and scope of his employment.

2. The Defendants deny the Claimant suffered a compensable injury by accident on June 3, 2016.

3. The Claimant worked as a roofer.

4. When the evidence is reviewed as a whole, there is no question that the Claimant had a heat-related incident on June 3, 2016.

5. The Claimant left work early due to the heat on both June 1, 2016 and June 2, 2016.

6. Defendants assert that the Claimant knew or should have known that he had this condition.

7. While there is clearly evidence that the Claimant has had previous heat-related episodes, the Claimant does not have a diagnosis of rhabdomyolysis until this event. There is no evidence in the record that the Claimant knew prior to this event that he suffered from rhabdomyolysis. Absent any evidence of an earlier diagnosis, it would require speculation on my part to conclude that he could or should have known. Rhabdomyolysis is a specific diagnosis which is different than heat exhaustion or dehydration.

8. A review of the medical records in evidence also shows that the Claimant has had other serious medical conditions that impact his general health.

9. The question at bar is one of compensability. By a preponderance of the evidence, does the Claimant now suffer from rhabdomyolysis as a result of the work-related events of June 3, 2016?

10. A letter in evidence from the Claimant's personal physician, Dr. Dean A. Floyd reads in part, "After talking with him and reviewing his hospital record, no discrete moment can be determined when he suffered an injury. He had a heat related illness which appeared to have resulted from a cauldron of chronic medical condition (HIV), medications and repeated heat exposure. How each contributed to his heat illness cannot be determined. It is the opinion of this examiner though that working on the roof top contributed to his acute illness." (Claimant's APA P. 35.)

11. In his deposition testimony, Dr. Floyd affirmed that his opinion cited above was still his opinion at the time of the deposition.

12. When asked, "Is there any way to medically assess the length of time that the repeated heat exposure took to result in or contribute to rhabdomyolysis?" Dr. Floyd's answer was, "There's no way we can do that." (Floyd Dep. Tr. 14:3-6.)

13. When the evidence is reviewed as a whole, the Claimant has not proven by a preponderance of the evidence that he suffered an injury by accident – rhabdomyolysis – on June 3, 2016. While the Claimant clearly suffers from this condition, he has not met his burden as to compensability set forth in the Act.

ADDITIONAL FINDINGS OF FACT OF THE APPELLANT PANEL

14. When the evidence is viewed as a whole, the Claimant has not proven by a preponderance of the evidence that he suffered an aggravation of a pre-existing condition of rhabdomyolysis on June 3, 2016.

CONCLUSIONS OF LAW AFFIRMED BY THE APPELLANT PANEL

Accordingly, as provided by S.C. Code Ann. § 42-17-40, it is hereby determined as a matter of law that:

1. Under Section 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.

2. Under Section 42-17-20 venue in Richland County, South Carolina, was proper and agreed to by the parties.

3. Under Section 1-23-320(b) and Regulation 67-607, notice of the hearing was timely and properly served upon all parties in interest.

4. Under Section 42-1-160, the Claimant has not met the burden of proving he suffered a compensable injury by accident arising out of an in the course of his employment.

5. The claim is dismissed with prejudice.

6. No hearing costs are assessed.

ADDITIONAL CONCLUSIONS OF LAW OF THE APPELLANT PANEL

7. Under Section 42-9-35, the Claimant has not met the burden of proving he suffered a compensable aggravation of a pre-existing condition arising out of and in the course of his employment.

DECISION AND ORDER OF THE COMMISSION ON APPEAL

THEREFORE IT IS ORDERED that the Decision and Order of the Hearing Commissioner is hereby affirmed in full and the above additional Findings of Fact and Conclusions of Law are adopted by the Appellant Panel of this Commission.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Jr., Commissioner

Michael Campbell, Commissioner

T. Scott Beck, Commissioner

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 Eugenia on May 1, 2018

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May 24, 2018

The Honorable, Jenny Abbott Kitchings
Clerk, South Carolina Court Of Appeals
Post Office Box 11629
Columbia, SC 29211

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SC Court of Appeals

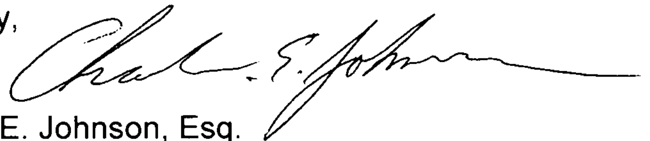
Matter: Aqua Seal Manufacturing v. Robert Evans
Case No: 2018-000922
Subject: Order Challenged on appeal
Our File No: 16-029-WCC

Dear Ms. Kitchings:

Please find attached the requested order that was challenged in the above reference appeal.

Your cooperation and assistance is appreciated and if you have any questions please contact.

Sincerely,



Charles E. Johnson, Esq.

cc: George A. Taylor, Esq.