

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

BOBBY ANDERSON,)
)
Claimant,)
)
vs.)
)
AMAZON CAE1 – WEST COLUMBIA,)
)
Employer,)
and)
)
AMERICAN ZURICH INSURANCE CO.)
)
)
Carrier.)

WCC FILE NO.: 1612632

ORDER

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SC Court of Appeals

HEARING: Held in Columbia, South Carolina on February 21, 2018

PURPOSE OF HEARING: Claimant's Form 50

DECISION AND ORDER: By T. Scott Beck, Commissioner

FILED: ~~_____~~ 2018

APPEARANCES: Bobby Anderson, *pro se*
Christopher C. Mingledorff, Attorney for Employer and Carrier of
Charleston, SC

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

Claimant's APA Submissions

While Claimant did not submit a Form 58 prehearing brief with formal APA submissions, Claimant has provided numerous documents to Defendants and the Commission throughout the

course of this claim. All of Claimant's documents and evidence were entered into the Commission's file without objection.

Employer's APA Submissions

Employer's APA #1: Sisters of Charity Providence Hospitals (pages 1-13)

Employer's APA #2: Palmetto Health USC (pages 14-29)

Employer's APA #3: South Carolina Vocational Rehabilitation (pages 30-59)

Employer's APA #4: Providence Internal Medicine (Pages 60-72)

Employer's APA #5: Offer of Employment (pages 73-75)

Employer's APA #6: Leave of Absence Documentation (pages 76-93)

Employer's APA #7: Supportive Feedback Documents (pages 94-101)

Employer's APA #8: Letter of Termination (p. 102)

Employer's APA #9: Termination Appeal and Findings (pages 103-109)

Employer's APA #10: Email Correspondence between Claimant and Employer (pages 110-151)

Employer's APA #11: Deposition Transcript of Claimant, Bobby R. Anderson (pages 152-245)

Employer's APA #12: Deposition Transcript of James Goodson, III, FNP-C (pages 246-298)

Employer's APA #13: Deposition Transcript of P. Douglas deHoll, M.D. (pages 299-368)

II. STIPULATIONS

The respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing is to determine the compensability of the claim and whether Claimant is entitled to benefits under the Act. Specifically, whether Claimant suffered an injury by repetitive trauma during the course and scope of his employment with Amazon.

2. Claimant has an average weekly wage of \$450.00 with a corresponding compensation rate of \$302.00.
3. Notices were timely and properly served upon all parties of interest.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

III. STATEMENT OF THE CASE

Claimant filed an initial Form 50 on or about February 27, 2016 alleging a work-related injury occurring on or about "September 2016." Claimant's mechanism of injury is "unknown." Based on subsequent documents filed by Claimant, it is apparent Claimant alleges an injury by repetitive trauma to his back and bilateral legs. Defendants properly filed a Form 51 denying the claim. The issue for the hearing was to determine the compensability of the claim to entitle Claimant to benefits under the Act. Claimant also had numerous outstanding motions to address.

IV. EVIDENCE OF THE CASE

Claimant was hired as a picker for Amazon on August 1, 2016 (See Defendant's APA #5, pp. 73-75). On August 16, 2016, Claimant filed for a leave of absence due to a non-work-related injury. (See Defendant's APA #6, pp. 76-93).

Claimant presented to Dr. deHoll at Palmetto Health Orthopedics on September 1, 2016 with complaints of lower back pain. Dr. deHoll notes that Claimant is "likely just having mechanical back pain from now overuse and deconditioning." Dr. deHoll provided a referral for physical therapy and short-term work restrictions. (See Defendant's APA #2, p. 15). Claimant was placed out of work on a leave of absence in accordance with Dr. deHoll's temporary work restrictions. (See APA #10, pp 112-13).

Claimant followed up with Dr. deHoll on October 5, 2016 wherein it is noted that Claimant “does not have any significant spinal pathology and likely suffering from some myofasciitis from deconditioning.” Dr. deHoll releases Claimant back to full duty work and did not recommend any additional medical treatment. (See Defendant’s APA #2, p. 28). Dr. deHoll’s deposition was completed on September 7, 2017, wherein he testified that there is nothing to suggest any specific work-related injury and that Claimant is simply experiencing “some inflammation of the back muscles from him being out of shape prior to whatever physical activity he was doing.” (See Defendant’s APA #13, p 310-11).

Claimant returned back to work at Amazon under full duties on October 8, 2016. (See Defendant’s APA #10, pp. 114-19). During this time, Claimant communicated to Amazon’s Human Resources Department that he wanted accommodations due to a “musculoskeletal disorder” and vision impairment. (See Defendant’s APA #10, pp 116-22). However, on October 14, 2016, Claimant communicated to Amazon he was no longer having any issues and did not need any accommodations or work restrictions. (See Defendant’s APA #10, p. 124).

On November 5, 2016, Claimant was terminated from Amazon as a result of multiple disciplinary and production violations. (See Defendant’s APA ##7 and 8). Claimant subsequently appealed his termination and was offered employment back with Amazon. (See Defendant’s APA #9). Prior to returning back to work for Amazon, Claimant filed for an additional leave of absence on December 15, 2016. (See Defendant’s APA # 10, p145).

On January 16, 2017, Claimant presented to James Goodson, NP at Providence Internal Medicine. Mr. Goodson notes that Claimant does not recall any specific injury but is experiencing back and leg inflammation. Mr. Goodson notes that he believes Claimant has a work-related injury and should be treating through workers’ compensation. (See Defendant’s

APA #4 pp. 60-72). Mr. Goodson's deposition was completed on August 7, 2017, wherein he reviewed additional medical records from Claimant's treatment with Dr. deHoll and ultimately could not say to a reasonable degree of medical certainty that Claimant's issues were caused by a work-related injury. (See Defendant's APA #12, p. 257).

Claimant's second leave of absence was denied on February 7, 2017. (See Defendant's APA #10, p.151). Claimant filed an initial Form 50 hearing request on February 27, 2017.

Bobby Anderson was present at the hearing appearing *pro se* to testify on his own behalf. Christa Hall, who works in Amazon's Human Resources Department, was present at the hearing to testify on Amazon's behalf.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. Claimant was repeatedly advised of his right to retain counsel in this matter, both in the pre-hearing conference and on the record. I find Claimant knowingly waived his right to counsel in proceeding with the hearing. Claimant has the right to retain counsel at any time during the course of his claim.
2. Claimant's "Motion for Change of Venue/Transfer" is denied as I find the South Carolina Workers' Compensation Commission has original jurisdiction over all matters herein pertaining to title 42 of the South Carolina Code.
3. Claimant's "Motion to Court" is denied as I find this matter has already been ruled upon by Commissioner McCaskill via Order dated August 3, 2017 and is controlled by S.C. Code Ann. § 42-15-90.

4. Claimant's "Motion to Quash Subpoena" is essentially an effort by Claimant to depose Dr. deHoll and reimburse him a \$25.00 appearance fee. Section 8 of the MSPM addresses proper compensation for depositions of physicians. Claimant's Motion is denied.
5. Claimant's "Motion to Appeal" is Claimant's attempt to have his filing fees waived by the Commission. As these fees have already been waived by the Commission, Claimant's Motion is moot, and therefore denied.
6. Claimant specifically pleads a repetitive trauma injury to his back and bilateral lower extremities.
7. I find the record void of any relevant evidence sufficient to satisfy Claimant's burden of proving a compensable repetitive trauma injury, or for that matter, any injury. Dr. deHoll's medical records and deposition testimony note that Claimant is simply experiencing inflammation to his back as a result of Claimant's current physical condition and engaging in new activity. Dr. deHoll notes that Claimant's symptoms are likely to improve with better physical conditioning. (See Defendant's APA ##2 and 13). Although James Goodson, NP, initially indicates that Claimant has experienced a work-related injury, after reviewing additional medical records from Dr. deHoll, he confirms that Claimant's complaints are a result of him having weakened muscles in his back and could not contribute his symptoms to any work-related injury. (See Defendant's APA ## 4 and 12).
8. Based on the greater weight of the evidence presented I find an injury by accident or repetitive trauma never occurred nor arose out of employment on Amazon's premises. Claimant's request for benefits is denied.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40 S.C. Code Ann. (1976, as amended), it is the determination of this Commission that:

1. Pursuant to § 42-1-160, Claimant did not suffer a compensable injury by accident arising out of and in the course of employment as to entitle him to the receipt of benefits under the South Carolina Workers' Compensation Act.
2. Pursuant to § 42-1-172, Claimant did not suffer an injury by repetitive trauma arising out of and in the course of employment as to entitle him to the receipt of benefits under the South Carolina Workers' Compensation Act.

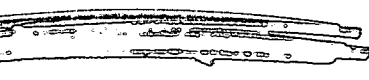
ORDER/AWARD

IT IS HEREBY ORDERED that Claimant did not suffer an injury by accident or repetitive trauma during the course and scope of employment, and thus, is not entitled to the receipt of benefits under the South Carolina Workers' Compensation Act.

AND IT IS SO ORDERED.



Commissioner T. Scott Beck.

Dated: 

Not signed