

APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO.: 1421397

RECEIVED  
AUG 16 2018  
SC Court of Appeals

JOHNNIE BIAS, EMPLOYEE. . . . . CLAIMANT/APPELLANT

VS.

SCANA CORPORATION, SELF-INSURED EMPLOYER. . . . . DEFENDANT/RESPONDENT.

---

Appellate Panel Review Hearing  
held in Columbia, South Carolina,  
on April 16, 2018, per notices  
timely and properly served upon  
all parties of interest.

Appellate Panel Decision and Order  
filed, July 19, 2018

---

APPEARANCES:

CLAIMANT/APPELLANT represented by Jacob M. Smith, Esquire, of Lexington, South Carolina; and

DEFENDANT/RESPONDENT represented by Nicolas L. Haigler, Esquire, of Columbia, South Carolina.

STATEMENT OF THE CASE

This is an appeal by Johnnie Bias ("Appellant" or "Claimant") from the Decision and Order of Commissioner Avery B. Wilkerson, Jr., filed on January 18, 2018.

These claims were before the South Carolina Workers' Compensation Commission pursuant to Forms 50 filed by the claimant on January 24, 2017. It is the position of the claimant that he sustained an injury by accident and/or an aggravation of a pre-existing condition resulting in injuries to his left hip, left leg, left ankle, left hand, left wrist, left arm, buttocks, back, right hip, right leg, right ankle, right foot, nervous system, bladder, urological system, penis, and psyche on October 14, 2014. He requests payment for all past and continued causally-related medical treatment and temporary total disability (TTD) benefits. In addition, he contends he has reached maximum medical improvement (MMI) for his compensable injuries as of February 3, 2016, and is permanently and totally disabled. The claimant further requests lifetime causally-related medical treatment for his compensable injuries per the recommendations of Dr. Hutcheson and Dr. Lind. Finally, if the claimant has not reached MMI, he contends he is entitled to continued TTD benefits until he does. To the contrary, the defendant denies the claimant sustained either a compensable injury by accident or aggravation of a pre-existing condition. However, if the claim is compensable, the defendant asserts the claimant has not reached MMI, as alleged.

The Hearing in this matter was held before Commissioner Avery B. Wilkerson, Jr. ("Hearing Commissioner") in Columbia, South Carolina, on September 19, 2017. By way of Decision and Order filed on January 18, 2018, the Hearing Commissioner determined the claimant did not sustain a compensable injury by accident and/or an aggravation of a pre-existing condition to his left hip, left leg, left ankle, left hand, left wrist, left arm, buttocks, back, right hip, right leg, right ankle, right foot, nervous system, bladder, urological system, penis, and psyche on October 14, 2014. The claimant was therefore denied any benefits under the Act.

Within the statutory period, the claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the

Full Commission Appellate Panel ("Appellate Panel") on April 16, 2018. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Appellate Panel and has since been under study and consideration. Specifically, the claimant respectfully requests the Appellate Panel to reverse the Decision and Order of the Hearing Commissioner in its entirety based upon the following grounds:

1. Did the Hearing Commissioner err in concluding Claimant did not sustain a compensable injury by accident to his back, left leg, right leg, urological system, bladder, penis and resultant psychological arising out of and in the course of his employment on or about October 14, 2014, pursuant to South Carolina Code Annotated § 42-1-160?
2. Did the Hearing Commissioner err in considering Claimant was on Social Security Disability, and received Long Term Disability Benefits, and had medical insurance in concluding that Claimant did not sustain a compensable work-related injury?

After careful review in the instant case of all grounds raised, the evidence in the record, and oral arguments from both counsel, the Commission finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be Affirmed in its entirety.

#### **FINDINGS OF FACT**

After careful review of the evidence presented by the parties, including the Hearing testimony of the claimant, the deposition testimony of Justin Hutcheson, M.D., the deposition testimony of Ivan LaMotta, M.D., the deposition testimony of Steven C. Poletti, M.D., the deposition testimony of Nicholas Lind, Ph.D., the deposition of Terry Seagle, and the medical records and exhibits submitted through the APA, as well as my personal observations of the claimant, WE FIND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Johnnie Bias as employee and SCANA the self-insured employer.
2. The claimant alleges he suffered a work-related accident arising out of and within the course and scope of his employment on October 14, 2014, resulting in injuries to his back, right leg, left leg, left hip, left ankle, buttocks, right hip, right ankle, right foot, nervous system, bladder, urological system, penis, and psyche. Defendants have denied this claim.

3. That the claimant earned wages that put him at the maximum compensation rate for 2014.
4. That the claimant testified that he was a 17+ year employee with SCANA and sustained a fall resulting in injuries on October 14, 2014.
5. We find the claimant had a longstanding history of back problems, including two surgeries, multiple injections, physical therapy, and medication managements from 1977 through March 2014. This Finding is based upon the greater weight of the evidence in the record, specifically Defendant's APA #1, p. 10, Claimant's APA #7, pp. 76, 79, 80, 81, 83, 85, 86, 87, 88, 89, 93, 94, 96, 99, 101, 102, 104, 105, 108, 111, 116-17, 121, 122, 123.
6. We find the claimant received prior impairment ratings to his low back, including 20% impairment to his low back in 1993 from Dr. Epstein, 10% impairment to his back from Dr. Poletti in 2004, and 15% impairment to the back from Dr. Poletti as a result of the March 2014 surgery. See Claimant's APA #7, p. 87; Defendant's APA #1, p. 26; and Deposition of Steven Poletti, M.D., p. 16.
7. We find the claimant's prior medical problems included longstanding low back pain, bilateral radiculopathy, impotence, and sleep apnea. Not all of the claimant's issues pre-existed the date of injury, but the issues after the date of injury are similar. This Finding is based upon the greater weight of the evidence in the record.
8. We find the claimant reported to his supervisor that he, in an unwitnessed incident, fell on a flight of stairs on October 14, 2014, but did not request medical treatment at that time. This Finding is based upon the greater weight of the evidence including but not limited to the deposition and Hearing testimony of the claimant and the deposition of Terry Seagle.
9. We find the claimant presented to Southeastern Spine Institute on October 15, 2014, but did not reference his alleged work accident or make any complaints of worsening symptoms. In fact, I find the report from the day after the alleged accident states the claimant "feel greatly improved since the surgery." This Finding is based upon the greater weight of the evidence in the record, including Claimant's APA #7, p. 125.
10. We find the claimant presented to Dr. Dan Love, his pulmonologist, on October 17, 2014, and October 21, 2014, with persistent coughing, but did not reference or mention a work-related accident or increase in his low back symptoms. This Finding is based upon the greater weight of the evidence in the record, including Defendant's APA #5, pp. 89-93.
11. We find that counsel for the claimant provided pre-IME letters to Dr. Lind, Dr. LaMotta and Dr. Hutcheson, wherein he summarized every report from Southeastern Spine Institute after August 2014, except the report of October 15, 2014. We further find that all three physicians identified this omission as "strange" or "odd", but two of the three acknowledged having the report prior to their IME's, and the third admitted to having a large stack of medicals but did not have the stack of medicals at the time of his deposition and could not remember whether he had seen the report before conducting his IME. This Finding is based upon the greater weight of the evidence in the record, specifically Defendant's Exhibit C, D and E and the deposition testimony of Dr. Lind, Dr. LaMotta and Dr. Hutcheson.

12. We find the claimant's complaints of back, right leg, and left leg issues since his alleged injury on October 14, 2014, are similar to those he experienced prior to the alleged date of injury and are the natural progression of his pre-existing symptomology. His urological issues also naturally progressed from his pre-existing symptoms, despite having never complained of urological issues prior to the alleged work incident. This finding is based upon the greater weight of the evidence in the record, specifically Claimant's Exhibit A, p. 596, Claimant's APA #7 pp. 125, 127, 129, 132, 135, 151, Claimant's APA #4 pp. 22, 28, Claimant's APA 33, p. 20, Deposition of Terry Seagle, p. 11-12, Claimant's APA #9, p. 162, Deposition of Dr. LaMotta, p. 68.
13. We find the report of Dr. Rames, as it pertains to when the claimant's urological problems began, to be wholly inconsistent with the medical records from Dr. Poletti's office and unresponsive of compensability as to his alleged urological condition/bladder. This Finding is based upon the greater weight of the evidence in the records, including Claimant's APA #3, #7, and the deposition of testimony of Dr. LaMotta.
14. We find the claimant's psychological issues are the result of his ongoing symptoms over the last several decades rather than the result of the alleged accident on October 14, 2014. This finding is based upon the greater weight of the evidence in the record, specifically Claimant's APA #10 p. 403, 221-26, 310-12, 200-02, 295-97, 290-93, 266-68, 259-61, 242-44, Claimant's APA #4 p. 28, Deposition of Dr. Nicholas Lind, p. 55.
15. We find that since the alleged incident, the claimant has been and continues to receive long-term Disability and Social Security Disability.
16. We find that all of the claimant's medical treatment since the date of the alleged incident has been paid by his group health insurance carrier.
17. We find the claimant failed to meet his burden of proving he sustained a compensable injury or aggravation of his longstanding and significant pre-existing back condition on October 14, 2014. Likewise, we find the alleged injuries to his right leg, left leg, left hip, left ankle, buttocks, right hip, right ankle, right foot, nervous system, bladder, urological system, penis, and psyche are not compensable. This Finding is based upon the greater weight of the evidence in the record.
18. We find the claimant is not entitled to benefits under the Act.
19. We find no costs shall be assessed in this matter.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of this Appellate Panel that:

1. Pursuant to Section 42-1-130, the claimant was a covered employee at the time in question.

2. Pursuant to Section 42-1-140, defendant-employer was a covered self-insured employer under the Act.
3. Pursuant to Section 42-1-160, and based upon the evidence in this case set forth within this Order, the claimant did not sustain a compensable injury to his back, right leg, left leg, left hip, left ankle, buttocks, right hip, right ankle, right foot, nervous system, bladder, urological system, penis, or psyche on October 14, 2014.
4. Pursuant to Section 42-9-35, and based upon the evidence in this case set forth within this Order, the claimant did not sustain a compensable aggravation of his pre-existing condition resulting in injuries to his back, right leg, left leg, left hip, left ankle, buttocks, right hip, right ankle, right foot, nervous system, bladder, urological system, penis, or psyche on October 14, 2014.
5. Under Section 42-15-60 and based upon the evidence in this case, we find the claimant is not entitled to medical treatment for his alleged injured body parts.
6. Under Section 42-9-10, we find the claimant is not entitled to any temporary total disability benefits.

**ORDER**

IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above-captioned matters on January 18, 2018, is hereby UNANIMOUSLY AFFIRMED IN ITS ENTIRETY.

**AND IT IS SO ORDERED.**

SOUTH CAROLINA WORKERS' COMPENSATION  
COMMISSION

  
\_\_\_\_\_  
Commissioner Aisha Taylor  
For the Appellate Panel

  
\_\_\_\_\_  
Commissioner T. Scott Beck

  
\_\_\_\_\_  
Commissioner Gerie McCaskill

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 July 19, 2018***