

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No.: 2018-000913
W.C.C. Case No.: 1621577

RECEIVED
OCT 04 2018
SC Court of Appeals

Carolyn Wilson,

Appellant,

v.

Fred's Stores of Tennessee, Inc., Employer, and
Safety National Casualty Corporation, Carrier,

Respondents.

INITIAL REPLY BRIEF OF APPELLANT

s/ Andrea C. Roche
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ARGUMENTS

- I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED AS A MATTER OF LAW BY REQUIRING THE CLAIMANT PROVE HER JOB WAS REPETITIVE IN NATURE WHERE S.C. CODE ANN. § 42-1-172 ONLY REQUIRES PROOF OF REPETITIVE TRAUMATIC EVENTS AND REPETITIVE ACTIVITIES IN THE REGULAR DUTIES OF EMPLOYMENT.

The claimant relies on the appellant's brief in reply to the arguments raised by the respondents in their brief.

- II. BECAUSE THE DECISION WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD, THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED BY FINDING THE CLAIMANT DID NOT SUSTAIN A REPETITIVE TRAUMA INJURY.

The claimant relies on the appellant's brief in reply to the arguments raised by the respondents in their brief.

- III. BECAUSE THE DECISION WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD, THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED BY FINDING THE CLAIMANT FAILED TO GIVE TIMELY NOTICE OF HER REPETITIVE TRAUMA INJURY TO HER EMPLOYER.

In reply to the arguments raised by the respondents, in addition to those arguments made in the appellant's brief, the claimant raises the following. Section 42-15-20(C) provides:

[i]n the case of repetitive trauma, notice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby.

S.C. Code Ann. § 42-15-20(C)(emphasis added). The claimant raised the issue of reasonable excuse before the Commission, and it was legal error for the Commission to fail to address the issue. Furthermore, the claimant's testimony was found credible by the Commission and established a reasonable excuse.

Contrary to the assertion of the Respondents, there was no evidence in the record regarding “extreme prejudice” to the defendants for any purported lack of notice. In their brief, the respondents point to the fact that the claimant was promoted even though she was having issues with her back. The respondents, however, produced no witness or any other evidence that the employer would not have promoted her had it known her condition. The Commission’s finding, therefore, was erroneously based on surmise and speculation.

CONCLUSION

For the reasons stated, this court should reverse the decision and order of the South Carolina Workers’ Compensation Commission and remand to the commission for a determination of benefits, or, in the alternative, remand to the commission for a finding regarding reasonable excuse.

October 4, 2018

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant by depositing a copy of it in the United States Mail, postage prepaid, on October 4, 2018, addressed to the attorney of record, Matthew LaFave, Esquire, Crowe LaFave, LLC, PO Box 1149, Columbia, SC 29202



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James "Jamie" Davidson, IV
Tina N. Herbert

October 4, 2018

Reply to: Columbia Office

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

Re: Carolyn Wilson v. Fred's Stores of Tennessee Inc.
Our file: 202717
SCWCC file: 2018-000913

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Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of the Initial Reply Brief of Appellant in the above referenced matter. Once filing is complete, please return the clocked copies in the enclosed self-addressed stamped envelope.

By copy of this correspondence to the attorney for the Respondent, I am hereby serving Mr. LaFave a copy of the Initial Reply Brief of Appellant.

If you have any questions, please do not hesitate to contact me.

With kindest personal regards, I remain,

Yours very truly,

MICKLE & BASS, LLC.

By: 
Andrea C. Roche

ACR/ah
Enclosure: Initial Reply Brief of Appellant
cc: Matthew LaFave, Esquire

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