

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Appellant Case No. 2012-211873
Case No. 2011-CP-08-00396

Robert Russell,.....Employee/Claimant, Respondent,

v.

Department of Health and Environmental Control, Employer, and
The State Accident Fund, Carrier,.....Appellants.

REPLY BRIEF OF APPELLANT

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I. THE COURT ERRED IN HOLDING THAT THE APPELLANTS ARE RESPONSIBLE FOR MEDICAL CARE RELATED TO RESPONDENT'S NON WORK RELATED PRE-EXISTING PSYCHOLOGICAL CONDITION.

As the Respondent's psychological condition pre existed the work injury and was found not have been aggravated by the work injury, Appellants should not be required to provide medical treatment for it. Section 42-9-400 does not mandate that the carrier provide treatment for an unrelated condition. Section 42-9-400 states that

If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability from injury by accident arising out of and in the course of his employment, resulting in compensation and medical payments liability or either, for disability that is substantially greater and is caused by aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall pay all awards of compensation and medical benefits provided by this title; but such employer or his insurance carrier shall be reimbursed from the Second Injury Fund as created by Section 42-7-310 for compensation and medical benefits in the following manner: ...

This section clearly indicates that the employer/carrier is responsible for medicals related to the compensable injury and payment of a disability award that is greater due to the pre existing condition but it does not create or mandate that the carrier pay for treatment for the preexisting condition. In this case, Respondent had a 5% rating to his back from Dr. Stovall, in all likelihood if Respondent did not have his psychological condition, the award would have been limited to an award under § 42-9-30 and Respondent would not have been found to be permanently and totally disabled. Instead, the Commission found the Respondent was permanently and totally disabled as a result of his psychological condition and the back condition combined and as a result the Appellants will have to pay a substantial greater award and the Appellants then have an opportunity to recoup the increased disability award.

Section 42-15-60 is the statute that mandates how medical care will be provided in worker's compensation cases. Section 42-15-60 has been modified since 2004 when this claim occurred. In 2004, § 42-15-60 read in part "[m]edical, surgical, hospital and other treatment, including medical and surgical supplies as may reasonably be required, for a period not exceeding ten weeks form the date of an injury to effect a cure or give relief and for such additional time as in the judgment of Commission will tend to lessen the period of disability." As this case involves a 2004 date of loss, the 2004 version of the statute should be controlling. This version states that medical treatment shall be provided as "reasonably required". As previously argued there is nothing reasonable about required the defendants to provide treatment for a psychological condition that was found not to be aggravated by the Claimant's comp injury and pre existed the injury.

The current version of 42-15-60 states that an "employer shall provide medical, surgical, hospital and other treatment... as reasonably may be required..". The current version added the word "shall" but still uses the phrase "as reasonably may be required." Clearly, under either version 42-15-60, employers are required treatment for compensable injuries not for pre existing conditions. The word "shall" does not create an obligation for the employer to pay for unrelated conditions. If the court accepts the Respondent's arguments then employers and carriers would be suddenly be responsible for all sorts of conditions that are not aggravated by the worker's comp injury, this is clearly not the intent of the statute or Title 42.

In this case, the treatment required for the Claimant's psychological treatment clearly exceeds the treatment required for his back injury. Claimant's back treatment

ended in 2005 when Dr. Stovall rated and released him on January 13, 2005.

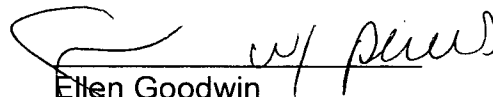
Claimant has had hospitalizations for his psychological treatment and is presumably on medications. Furthermore, Finding of Fact 11 finds that the Respondent's psychological condition was already spiraling downward prior to the accident. The Order also found that during hospitalization 6 days after the accident for psychiatric treatment there was no mention of his worker's comp accident. (R. pp. 3-5). Without a doubt, regardless of the worker's compensation injury, Respondent was going to have get treatment for his psychological treatment if the worker's compensation accident never happened. Requiring the carrier to pay for the Respondent's psychological treatment creates windfall for the Respondent that was not intended by the statute.

For all of the foregoing reasons the order of the circuit court should be reversed and remanded.

Respectfully submitted,



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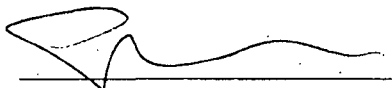
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PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant and Reply Brief of Appellant on Robert Russell by depositing a copy of it in the United States Mail, postage prepaid, on November 8, 2012, addressed to his attorney of record, J. David Murrell, 1517 Sam Rittenberg Boulevard, Charleston, SC 29407.

November 8, 2012

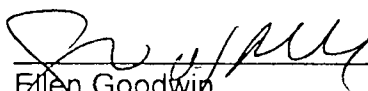


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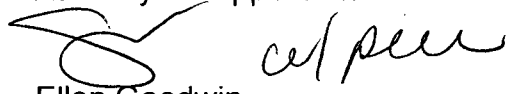
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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Brief and Reply Brief
comply with Rule 211(b), SCACR.

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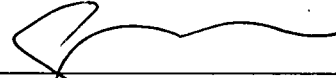
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