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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2010-CP-40-4071

Carmen Morgan Appellant

v.

South Carolina Bank and Trust,
Employer and Cincinnati Insurance
Company, Carrier. Respondent,

APPELLANT'S FINAL BRIEF

Everett Hope Garner
Holler, Garner, Corbett, Ormond,
Plante & Dunn
P.O. Box 11006
Columbia, SC 29211
(803) 765-2968

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN AFFIRMING THE COMMISSION'S FINDING THAT CLAIMANT FAILED TO TIMELY APPEAL THE JULY 21, 2009 ORDER OF THE HEARING COMMISSIONER; THE ERROR BEING THAT DUE PROCESS AND FAIRNESS IN CONJUNCTION WITH A LIBERAL CONSTRUCTION OF THE APPLICABLE LAW AND REGULATIONS MANDATE OTHERWISE?
- II. DID THE CIRCUIT COURT ERR IN AFFIRMING THE COMMISSION'S DENIAL OF CLAIMANT'S MOTION FOR RECONSIDERATION AND FINDING THAT CLAIMANT'S HOSPITALIZATION AT BAPTIST HOSPITAL FROM FEBRUARY 28, 2006 TO MAY 16, 2006 WAS NOT RELATED TO THE AUGUST 8, 2002 WORK RELATED INJURY; THE ERROR BEING THAT THE ISSUE RELATING TO WHETHER THIS HOSPITALIZATION WAS ATTRIBUTABLE TO THE WORK RELATED INJURY WAS NOT RAISED BY THE DEFENDANT IN THEIR FORM 51 OR FORM 58 AND FURTHER A REVIEW OF THE RELEVANT MEDICAL RECORDS AND REPORTS INDICATE A NEXUS TO THE WORK RELATED INJURIES?
- III. DID THE CIRCUIT COURT ERR IN ADOPTING THE ORDER OF THE COMMISSION IN DENYING CLAIMANT'S CHANGE OF CONDITION PETITION ON THE BASIS THAT IT WAS BARRED BY THE STATUTE OF LIMITATION; THE ERROR BEING THAT MORE THAN ONE (1) YEAR HAD NOT ELAPSED FOLLOWING THE PAYMENT OF COMPENSATION AS DEFINED BY STATUTE?
- IV. DID THE CIRCUIT COURT ERR IN ADOPTING THE FINDINGS OF THE COMMISSION THAT CLAIMANT DID NOT ESTABLISH A COMPENSABLE CHANGE OF CONDITION CAUSALLY CONNECTED TO THE ADMITTED CLAIM; THE ERROR BEING THAT THE PREPONDERANCE OF THE EVIDENCE AND THE SPECIFIC MEDICAL FINDINGS OF CLAIMANT'S TREATING PHYSICIAN, DR. BOYD ESTABLISH THIS CAUSAL CONNECTION?

STATEMENT OF THE CASE WITH CHRONOLOGY

August 8, 2002 - Claimant is injured in a work related accident when a gunmen robbed her employer, South Carolina Bank and Trust, where she worked as a teller. Claimant sustained physical injuries to her neck and back.

August 2002 - Claimant is diagnosed as suffering from post traumatic stress disorder resulting from the work related accident.

March 12, 2003 - Claimant is initially found to have reached maximum medical improvement for her psychological injuries by her initial treating psychologist Dr. Stephanie Boyd.

March 18, 2003 - Defendant filed Form 21 - Stop Payment Request.

May 13, 2003 - A hearing was held on the Defendant's Stop Payment Request before Commissioner Lisa Chavis (Glover).

June 11, 2003 - Commissioner Chavis (Glover) found that the Defendants were not entitled to stop payment of temporary total benefits and Claimant was entitled to additional psychological treatment as directed by Dr. Boyd.

January 28, 2004 - A hearing is held on the Defendants appeal of the Decision and Order of Commissioner Chavis (Glover).

March 30, 2004 - Order of the Full Commission held that Claimant had reached maximum medical improvement on March 12, 2003 but the Defendants were not entitled to a stop payment for

benefits but were entitled to a credit toward any permanency ultimately awarded for payments after January 28, 2004.

April 1, 2004 - Defendants filed another Form 21 - Requesting a Stop Payment of Benefits.

May 18, 2004 - A hearing was held before Commission Bryan Lyndon on Defendant's Form 21.

June 1, 2004 - Commissioner Lyndon issued an Order allowing Defendants to immediately stop payments of temporary total disability benefits.

June 22, 2004 - Claimant filed a Form 30 - Request for Commission Review.

August 4, 2004 - Claimant through her attorney filed an Amended Form 30.

March 4, 2005 - Dr. Boyd again finds that Claimant has reached maximum medical improvement providing a 31% whole person rating for her psychological injuries.

March 25, 2005 - Claimant through her attorney filed a Form 50 claiming additional temporary total disability benefits and asserting total general disability based on a loss of earning capacity.

April 26, 2005 - A hearing is scheduled on Claimant's Form 50 resulting occasioning a pre-hearing conference resulting in mandatory mediation ordered by Commissioner Lyndon.

June 27, 2005 - A hearing was scheduled before Commissioner Lyndon pursuant to the failure of the case to settle through mediation.

September 28, 2005 - Order is issued by Commissioner Lyndon providing in pertinent part that Claimant failed to prove any permanent impairment related to her neck, back and shoulder. Further that Claimant failed to prove any permanent loss of earning capacity and further that Defendant was required to continue to provide causally related medicals for Claimant's psychological injuries.

January 2006 - Claimant retains her present attorney.

September 28, 2006 - Claimant through her attorney appealed the Decision and Order of Commissioner Lyndon to the Full Commission.

September 28, 2006 - The Commission Appellate Panel issued an Order affirming the Decision of the Hearing Commissioner.

October 30, 2006 - Claimant was awarded Social Security Disability Benefits by the Social Security Administration.

November 17, 2006 - Claimant through her attorney filed a Notice of Intent to Appeal to the Circuit Court from the Decision of the Full Commission.

August 29, 2007 - The Circuit Court affirmed the Decision of the Commission by Form Order.

January 12, 2009 - Claimant through her attorney filed a Change of Condition Form 50 alleging that her condition had worsened at or near the time of her hospitalizations beginning on February 28, 2006 continuing until May 16, 2006. In support of this Petition this Form 50 - Change of Condition, Claimant filed a report of her treating psychologist Dr. Stephanie Boyd.

May 5, 2009 - A hearing was held in regard to Claimant's Change of Condition Petition.

July 21, 2009 - Commissioner Lyndon issues an Order denying Claimant's petition for a compensable change of condition. The Commissioner further found that the Change of Condition Petition was not timely asserted and was barred by the statute of limitations. The Commissioner further found that the Defendant was not responsible for medical expenses related to Claimant's hospitalization from February 28, 2006 through May 16, 2006 at Baptist Hospital on the basis that the hospitalization was not causally related to the work injury.

July 31, 2009 - Claimant through her attorney filed a Motion for Reconsideration of Commissioner Lyndon's Decision and Order.

September 15, 2009 - Commissioner Lyndon dismisses and denies Claimant's Motion for Reconsideration.

October 1, 2009 - Claimant through her attorney filed a Form 30 - Request for Commission Review of Commissioner Lyndon's Decision.

May 18, 2010 - The Workers' Compensation Commission issues its Order essentially adopting the findings of the Hearing Commissioner.

August 7, 2012 - The Circuit Court files its Order essentially adopting the findings of the Full Commission.

This is an admitted case arising out of an injury sustained by the Claimant on August 8, 2002 when she was the victim of a bank robbery at her place of employment.

Claimant received treatment for her physical injuries primarily from Doctor's Care and Dr. William Felmly of the Moore Orthopaedic Clinic. Concomitantly, Claimant was receiving treatment for her psychological injuries - primarily post traumatic stress disorder and depression from Dr. Stephanie Boyd and Dr. Elin Berg and others over a long period of time beginning on August 8, 2002 and continuing. As of March 4, 2005, Dr. Boyd assigned a subsequent thirty-one (31%) percent whole person impairment rating to Claimant for her psychological injuries.

Claimant continued treatment with Dr. Boyd on a frequent basis and Dr. Boyd issued a report dated October 17, 2007 opining that Claimant's condition had worsened at or shortly preceding her hospitalizations at Baptist Hospital which extended from February 28, 2006 to May 16, 2006. Dr. Boyd indicated an ongoing need for psychiatric and psychological interventions and the

Defendant is continuing to provide related treatments and medications.

ARGUMENTS

I. The Circuit Court erred in affirming the Commission's finding that Claimant failed to timely appeal the July 21, 2009 Order of the Hearing Commissioner; the error being that due process and fairness in conjunction with a liberal construction of the applicable law and regulations mandate otherwise.

Claimant made a timely Motion for Reconsideration which after denial was appealed to the Full Commission. It is axiomatic that the filing of a timely Motion for Consideration acts as a toll upon the statutory time limits for a direct appeal. Further, the requirement of a liberal construction of the applicable statute and procedures militates strongly in favor of Claimant's position on this issue. To deny such an appeal, on such arbitrary procedural grounds amounts to a deprivation of fairness and due process under the circumstances of this case.

II. The Circuit Court erred in affirming the Commission's denial of Claimant's Motion for Reconsideration and finding that Claimant's hospitalization at Baptist Hospital from February 28, 2006 to May 16, 2006 was not related to the August 8, 2002 work related injury; the error being that the issue relating to whether this hospitalization was attributable to the work related injury was not raised by the Defendant in their Form 51 or Form 58 and further a review of the relevant medical records and reports indicate a nexus to the work related injuries.

The Hearing Commissioner stated in his Order which was adopted by the Commission and Circuit Court that Claimant was

admitted to the hospital following an altercation with her mother purportedly quoting from a doctor's report of May 10, 2006.

(This hospital admission took place on February 26, 2006).

Claimant was admitted to Baptist Hospital on February 28, 2006.

The emergency room records of February 27, 2006 specifically reference a history of post traumatic stress disorder secondary

to the bank robbery in question and resulting depression. **No**

mention is made of any family conflict ("altercation with

mother"). Claimant was admitted on the following day with a

description of her present illness as being related to post

traumatic stress disorder with worsening depression. None of the

emergency room records or the admitting documents make any

reference to a family conflict ("altercation with mother").

Claimant remained hospitalized until May 16, 2006 with repeated

references to post traumatic stress disorder and no mention of

family conflict ("altercation with mother") during that

hospitalization.

Claimant was readmitted to Baptist Hospital on March 15,

2006. Her readmitting diagnosis was depression and again no

mention of any family conflict. The March 14th emergency room

note explicitly states that Claimant had no social stressors but

again refers to chronic pain, depression, post traumatic stress

disorder. The psychiatric history indicates depression with post

traumatic stress disorder emanating from a robbery in 2002 at work. (R.p. 55).

The discharge summary of April 10, 2006 refers to a history of depression and possible post traumatic stress disorder secondary to an armed robbery when Claimant was a bank teller indicating that she dates all of these conditions to "after the robbery." (R.p. 54). Also, a note within the discharge summary refers to the fact that Claimant has been homeless because she had been recently ejected from her mother's residence after a disagreement when she "got physical" with her mother. This minor entry is the only reference in the voluminous medical records from February 28, 2006 to May 16, 2006 which make any reference to any type of family conflict or altercation and Claimant would assert that this is infinitesimal in this context.

An emergency room record of April 22, 2006 again refers to depression and post traumatic stress disorder, borderline personality disorder without any mention of any family conflict. (R.p. 53).

The May 16, 2006 discharge summary again documents a history of depression, post traumatic stress disorder since the armed robbery at work in 2002 and does make a statement retroactively about the "original admission was after she had been ejected from her mother's residence after a disagreement which states she got physical with her mother." This extraneous after the fact

statement is inconsistent with the specific medical records for this entire hospitalization and does not alter the fact that post traumatic stress disorder and concomitant depression were specifically related back to the work related injury.

For these reasons and the fact that these issues were not raised in the Form 51 or Form 58, the Circuit Court's Order essentially adopting the decision of the Commission should be reversed and a finding reinstated that this aforesaid hospitalization was work related.

III. The Circuit Court erred in adopting the Order of the Commission denying Claimant's Change of Condition Petition on the basis that it was barred by the statute of limitations; the error being that more than one (1) year had not elapsed following the payment of compensation as defined by statute.

Section 42-17-90 of the South Carolina Code grants the Commission the authority to provide for the review of award on change of condition vesting it with the authority to end, diminish or increase compensation previously awarded. The statute further provides that no such review shall be made after twelve (12) months from the date of the last payment of compensation pursuant to an award under this title. A liberal construction of this section is required. Allen v. Vincent Outdoor Advertising Co., 36 S.C. 22, 112 S.E.2d 722 (1962). The Workers' Compensation Act should be liberally construed in furtherance for which it was designed. Any reasonable doubt as

to construction should be resolved in favor of the Claimant by including him within the coverage of the Act rather than excluding him. Davis v. South Carolina Department of Corrections, 345 S.C.2d 245 (1986). The term compensation includes both compensatory benefits and medical benefits. Gattis v. Murrells Inlet VFW #10420, 353 S.C. 100, 576 S.E.2d 191 (Ct. App. 2003).

In the present case, Claimant was continuing to receive medical benefits even up to and past the time of filing of her Change of Condition Petition. Thus in accordance with the judicial interpretation of the definition of benefits as stated, Claimant's Change of Condition Petition was timely and not barred by the statute of limitations. In light of the above, it would be the province of the legislature to change the definition of compensation.

IV. The Circuit Court erred in adopting the findings of the Commission that Claimant did not establish a compensable change of condition causally connected to the admitted claim; the error being that the preponderance of the evidence and the specific medical findings of Claimant's treating physician, Dr. Boyd establish this causal connection.

Claimant's long term treating psychologist, Dr. Stephanie Boyd specifically opined in her letter of October 17, 2007 that Claimant's work related psychological condition most probably severely worsened at or shortly preceding hospitalizations.

extending from February 28, 2006 until May 16, 2006. The Defendant has presented no countervailing or contradictory evidence or medical opinion. In her deposition, Dr. Boyd specifically references the fact that Claimant's condition had changed for the worse to the point that she needed to be hospitalized (R.p. 50-51). Up until the point of the hospitalizations, Claimant had been treated through psychological counseling sessions and other coping mechanisms without the need for hospitalization.

As previously stated, the hospitalization admitting diagnoses and documentation repeatedly referred to post traumatic stress disorder and depression being related back to the work related injury. Thus, the medical evidence and Dr. Boyd's opinion confirm a causal connection between the original admitted claim and Claimant's worsening condition which was thoroughly documented, assessed and evaluated in the medical records and opinions of the treating physician.

The mere fact that Claimant may have had other stressors in her life does not break the chain of causal connection and does not constitute any significant intervening events so as to disconnect the nexus between the original injury and the subsequent medical situations.

It remains indisputable that the incident provoking the post traumatic stress disorder and resulting depression was the work

related accident and injury, and when considering the required liberal construction of the Act, mandates a finding of the change of condition based on a preponderance of the evidence when no contradictory or conflicting evidence is present.

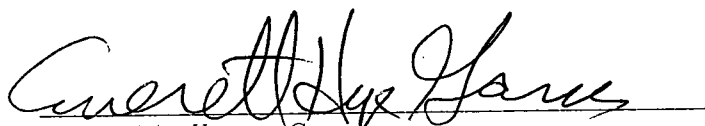
CONCLUSION

Numerous cases in this State have held that the Workers' Compensation Act is remedial legislation which is entitled to a liberal construction in order to accomplish the ends and purposes for which the Act was enacted. Flemon v. Dickert-Keowee, Inc., 259 S.C. 99, S.E.2d 751 (1972); Baldwin v. Pepsi Cola Bottling Co., 234 S.C. 320, 108 S.E.2d 409 (1959); Cokeley v. Robert E. Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941); Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940).

In the present case, the only substantial medical evidence of record indicates that Claimant has suffered a change of condition for the worse which cumulated in a specific need for hospitalization which was causally related back to her work injury. Therefore, based on the uncontroverted medical evidence and the procedural deficiencies discussed herein, the Commission should find that Claimant's hospitalization from February 28, 2006 until May 16, 2006 was related to the August 8, 2002 work related injury and require Defendant to be responsible for these medical expenses.

Also the statute of limitations does not bar Claimant's Change of Condition Petition based on the statutory and judicial authority cited herein and a causally related change of condition has been shown by a preponderance of the medical evidence which mandates a granting of Claimant's Change of Condition Petition.

Respectfully Submitted,


Everett Hope Garner
Attorney for Appellant

Columbia, South Carolina
3/5, 2013

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CERTIFICATE OF COUNSEL

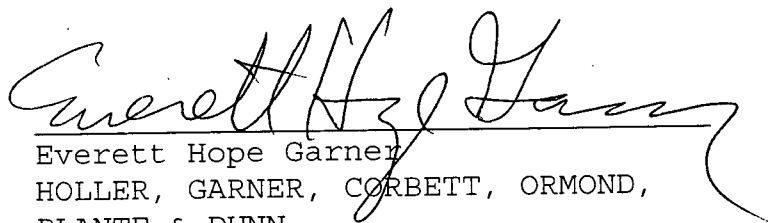
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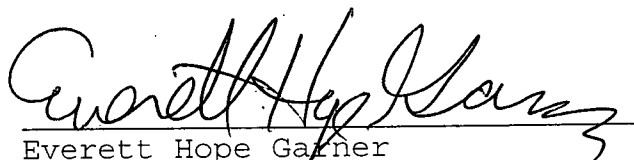
I certify that I have served the Appellant's Final Brief on South Carolina Bank and Trust and Cincinnati Insurance Company by depositing a copy of it in the United States mail, postage prepaid, on March 11, 2013, addressed to their attorney of record, Shannon T. Poteat, Esquire, Willson, Jones, Carter, & Baxley, 4500 Fort Jackson Boulevard, Columbia, South Carolina 29209.

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