

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), Respondents.

RESPONDENTS' FINAL BRIEF

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. Whether The Circuit Court Correctly Affirmed The Full Commission's Finding That The Appellant Failed To Timely Appeal The July 21, 2009 Order Of The Hearing Commissioner.
- II. Whether The Circuit Court Correctly Affirmed Both (1) The Full Commission's Denial Of Appellant's Motion To Reconsider, And (2) The Full Commission's Finding That Appellant's February 28, 2006 To May 16, 2006 Stay At Baptist Hospital Was Not Causally To Appellant's August 8, 2002 Work Accident.
- III. Whether The Circuit Court Correctly Adopted The Full Commission's Order Denying Appellant's Change Of Condition On The Basis That It Was Barred By The One (1) Year Statue Of Limitations.
- IV. Whether The Circuit Court Correctly Adopted The Full Commission's Finding That The Appellant Did Not Establish A Compensable Change Of Condition Causally Related To Her Admitted Claim After Considering The Evidence As A Whole, Including The Medical Findings Of Dr. Stephanie Boyd.

STATEMENT OF THE CASE

1. Procedural History

Claimant Carmen Morgan ("Appellant") was involved in an admitted work accident on August 8, 2002, when she working at a branch of South Carolina Bank and Trust that was robbed. As a result of the accident, Appellant sustained admitted injuries to the neck/back and psychological overlay as a result of post-traumatic stress disorder.

On March 18, 2003, Defendants South Carolina Bank and Trust and Cincinnati Insurance Company ("Respondents") filed a Form 21 Employer's Request for Hearing to stop payment of Appellant's benefits. A hearing was held before Commissioner Lisa Glover on May 13, 2003. Commissioner Glover found that Appellant was not at maximum medical improvement, so Respondents were not entitled to stop payment of temporary total disability benefits. Respondents appealed the Decision of Commissioner Glover, and a hearing was held before the

Appellate Panel of the South Carolina Workers Compensation ("Full Commission") on January 28, 2004.

On March 30, 2004, the Full Commission issued a Decision and Order, finding that Appellant had reached Maximum Medical Improvement on March 12, 2003, and although Respondents were not entitled to stop payment at that time, they were entitled to a credit towards any permanency ultimately awarded for benefits after January 28, 2004.

On April 1, 2004, Respondents filed a second Form 21 Request for Hearing to stop payment of temporary benefits. A hearing was held before Commissioner Bryan Lyndon on May 18, 2004. On June 1, 2004, Commissioner Lyndon issued a Decision and Order allowing Respondents to stop payment of temporary total disability benefits immediately. On August 4, 2004, Appellant filed a Form 50 Request for Hearing. Following an unsuccessful court-ordered mediation, a hearing was held before Commissioner Lyndon on June 27, 2005. Commissioner Lyndon subsequently issued a September 28, 2005 Decision and Order, wherein he found that Appellant failed to prove any permanent impairment to her back, neck, and shoulder. Commissioner Lyndon further found that Appellant failed to prove any lack of earning capacity, and Respondents were required to provide ongoing future treatment for Appellant's psychological injuries.

On September 28, 2006, Appellant, through her newly retained attorney, appealed to the Full Commission the September 28, 2005 Decision and Order of the Hearing Commissioner. The Full Commission, by unanimous vote, affirmed the Order of the Hearing Commissioner in its entirety in an Appellate Panel Order issued September 28, 2006. On November 17, 2006, Appellant filed her Notice of Appeal with the Richland County Circuit Court, and on August 27, 2009 the Circuit Court affirmed the Decision and the Full Commission.

On January 12, 2009, Claimant filed a Form 50 Request for Hearing, alleging a change of condition beginning on or near the date of February 28, 2006, when she was hospitalized at Baptist Hospital. A hearing was held on Appellant's Form 50, and on July 21, 2009, Commissioner Lyndon issued a Decision and Order denying Appellant's alleged change of condition on the grounds that it was not timely asserted and barred by the statute of limitations, and finding that Respondents were not responsible for Appellant's medical expenses from February 28, 2006 through May 16, 2006 at Baptist Hospital, because the hospitalization was not causally related to her work injury.

On July 31, 2009, Appellant filed a Motion for Reconsideration, which Respondents assert is not a proper Motion in accordance with the South Carolina Workers Compensation Act. The Motion for Reconsideration was denied and dismissed by Commissioner Lyndon on September 25, 2009. On October 1, 2009, Appellant filed a Form 30 Request for Commission Review of Commissioner Lyndon's July 21, 2009 Decision and Order. A hearing was held before the Full Commission on February 23, 2010. On May 18, 2010, the Full Commission issued a Decision and Order, wherein they found that Appellant did not timely appeal to the July 21, 2009 Decision and Order, and accordingly the Order was affirmed in its entirety. (R. p. 13, R. p.16). The Full Commission further affirmed that Claimant's Motion to Reconsider is also denied. (R. p. 13, R. p. 16).

2. Decision of the Richland County Circuit Court

On June 16, 2010, Appellant filed a Notice of Intent to Appeal with the Richland County Circuit Court. A hearing was held before the Honorable DeAndrea Gist Benjamin on April 20, 2012. On August 7, 2012, the Circuit Court issued an Order affirming the Decision and Order Full Commission in its entirety. (R. p. 10).

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY AFFIRMED THE FULL COMMISSION'S FINDING THAT APPELLANT FAILED TO APPEAL TIMELY THE JULY 21, 2009 ORDER OF THE HEARING COMMISSIONER.

A. Commission Review of a Hearing Commissioner's Decision and Order

The proper method for requesting Full Commission review of a Hearing Commissioner's Order is set forth in S.C. Code Ann. §42-17-50 and Regulation 67-701. S.C. Code Ann. §42-17-50 states that a party to a claim has fourteen (14) days from the date when notice of an award shall have been given in order to request Commission Review of a Hearing Commissioner's Order. More specifically, Regulation 67-601 establishes that either party may request Commission review of the Hearing Commissioner's Decision by filing a Form 30 Request for Commission Review with the Commission's Judicial Department within fourteen (14) days of the day the Hearing Commissioner's Order is received. Regulation 67-701(3)(a)and(b) go on to state that all grounds for appeal must be presented on the Form 30 in the form of questions presented in a concise manner concerning one finding of fact, conclusion of law, or other proposition the appellant believes to be in error.

In this case, the Decision and Order of Hearing Commissioner Lyndon was issued on July 21, 2009. Appellant did not file a Form 30 Request for Commission Review until October 1, 2009, seventy two (72) days after the Order was issued. As such, the Circuit Court correctly affirmed the finding of the Full Commission that the Appellant failed to timely appeal the July 21, 2009 Order of the Hearing Commissioner. (R. pp. 8-9).

B. Claimant's Motion for Reconsideration

Although Claimant failed to file a Form 30 Request for Commission Review properly

within the Fourteen (14) day time limit set forth in §42-17-50 and Regulation 67-701, Appellant did file a Motion for Reconsideration with the Hearing Commissioner on July 31, 2009, wherein Appellant asked the Hearing Commissioner to reconsider specific findings of fact and conclusions of law within the Order. The Hearing Commissioner denied and dismissed Appellant's Motion for Reconsideration September 15, 2009.

Regulation 67-215 sets forth the procedure for filing of motions under the Workers Compensation Act. Specifically, 67-215(B) states that the Commission will not address a motion involving the merits of the claim, including, but not limited to, a motion for dismissal or summary judgment. Clearly, Appellant's Motion for Reconsideration of a Hearing Commissioner's Order, especially one that addresses specific findings of fact and conclusions of law, goes to the merits of the claim and is therefore not a proper motion under the Regulation 67-215. Further, since the motion is not a proper motion recognized by the Workers Compensation Act, it must follow that it would be improper to allow the motion to toll the fourteen (14) day time limit for requesting Full Commission review of a Hearing Commissioner's Decision as set forth in §42-17-50 and Regulation 67-701.

C. The Denial Of Claimant's Appeal Based On Appellant's Failure To Timely Request Commission Review Does Not Amount To Deprivation Of Fairness And Due Process.

In her argument, Appellant incorrectly suggests that there exists a "requirement" of a liberal construction of the applicable statute and procedures which mitigates strongly in favor of the Appellant, and to deny an appeal on such "arbitrary" grounds amounts to a deprivation of fairness and due process.

Appellant cites several cases in support of her position that the Workers' Compensation Act is "remedial" legislation entitled to liberal construction in order to accomplish the ends and

purposes for which the Act was enacted. First, Appellant cites two South Carolina Supreme Courts cases in which a liberal construction of the dependency section of the Workers' Compensation Act was allowed in order to designate payment of a deceased claimant's compensation to the proper dependents that the Act was created to protect. Flemon v. Dickert-Keowee, Inc., 190 S.E.2d 751, 259 S.C. 99 (S.C. 1972); Cokely v. Robert Lee, Inc., 14 S.E.2d 889, 197 S.C. 157 (S.C. 1941). Next, Appellant cites a South Carolina Supreme Court case in which a liberal construction of the act was allowed based on a close factual distinction that was outcome determinative with respect to compensability for a very serious accident. Baldwin v. Pepsi-Bottling Company, 108 S.E.2d 409, (S.C. 1959). Finally, Appellant cites a South Carolina Supreme Court case in which the liberal construction of a statute was necessary in order to prevent South Carolina from losing its jurisdictional rights over a claimant who lived in South Carolina and worked for a South Carolina based company, but the claimant was temporarily engaged in work for his employer just over the North Carolina line. Ham v. Mullins Lumber Co., 7 S.E.2d 712, 193 S.C. 66 (S.C. 1940)

The cases relied on by the Appellant are all similar in that the liberal construction of the statute was allowed only to accomplish the overall objectives the Workers' Compensation Act were created for. Further, the instances of liberal construction of the Workers' Compensation Act are to resolve issues 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.E.2d 245, 289 S.C. 183 (S.C. 1986). On the contrary, the allowance of a liberal construction of Workers Compensation Act is not intended to allow for inconsistencies in the rules and regulations of practice once claimants are brought under the protection of the Act. The cases involving liberal construction of the Workers Compensation Act are all very distinct from the instant case, in

which Appellant requests a liberal construction of very specific statutes and regulations that control the time limits for appeals by all parties. The statute and regulation at issue are hardly arbitrary, and a liberal construction of the applicable statute and regulation is neither required nor appropriate in this case. On the contrary, the timelines set forth in the Workers' Compensation Act serves an important role intended to grant uniformity to parties and judicial economy for the Commission. As such, the Circuit Court correctly affirmed the Full Commission's finding that Appellant failed to file a timely Request for Commission Review. (R. pp. 6-7).

II. THE CIRCUIT COURT CORRECTLY AFFIRMED THE COMMISSION'S DENIAL OF APPELLANT'S MOTION FOR RECONSIDERATION AND THE COMMISSION'S FINDING THAT APPELLANT'S HOSPITALIZATION AT BAPTIST HOSPITAL FROM FEBRUARY 29, 2006 TO MAY 16, 2006 WAS NOT RELATED TO HER AUGUST 8, 2002 WORK RELATED ACCIDENT.

The Circuit Court properly affirmed the Full Commission's finding that Appellant's hospitalization at Baptist hospital from February 28, 2006 to May 16, 2006 was not related to the August 2, 2002 work-related injury based on a review of the medical records and reports. (R. p. 9). Dr. Carol O. Kinard's May 16, 2006 record specifically states "the original admission was after she had been ejected from her mother's residence after a disagreement in which the patient says she 'got physical' with her mother." (Supp. R. p. 75). Dr. Kinard's report went on to state that "she seemed content to remain in the hospital for long periods of time; in fact this admission was over 30 days." (Supp. R. p. 75). Based on his review of the Appellant's medical records surrounding her hospitalization and the deposition testimony of Dr. Boyd, the Hearing Commissioner properly found that this period of treatment was not related to the Appellant's work-related accident and Respondents should be not responsible (Supp. R. p. 71), and the Circuit Court correctly affirmed the Decision of the Full Commission. (R. pp. 9-10).

III. THE CIRCUIT COURT CORRECTLY ADOPTED THE ORDER OF THE COMMISSION DENYING APPELLANT'S CHANGE OF CONDITION ON THE BASIS THAT IT WAS BARRED BY THE ONE (1) YEAR STATUTE OF LIMITATIONS.

The Circuit Court properly affirmed the Full Commission's denial of Appellant's change of condition claim based on the grounds that it was not timely filed. (R. pp. 8-9). South Carolina Code Ann. § 42-17-90(A) states that the Commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded, on proof by preponderance of the evidence that there has been a change of condition caused by the original injury, after the last payment of compensation. The Statute goes on to limit this review, stating that the review does not affect the award with regards to any monies paid and the *review must not be made after twelve months from the date of the last payment of compensation.* §42-17-90(A).

Appellant argues that the Commission erred in denying the Appellant's change of condition petition because not more than one year had elapsed following the payment of compensation as defined by the statute. The Workers Compensation Act defines compensation as "the money allowance payable to an employee or his dependants as provided for in this Title and includes funeral benefits provided in this Title." §42-1-100. Absent from this definition is any mention of medical benefits provided to a claimant.

In this case, Appellant argues that the term "compensation" includes both compensatory benefits and medical benefits in accordance with Gattis v. Murrles Inlet VFW #10420, 353 S.C. 100, 576 S.E.2d 191 (Ct. App. 2003). In Gattis, the Appellant argued that the previously awarded "compensation" the Commission has authority to end, diminish, or increase was limited to a compensatory award and Commission did not have the authority to order payment of

medical bills. The Court of Appeals disagreed and ordered that the term “compensation” was not limited to a compensatory award and did not preclude the Commission from awarding benefits to a claimant under §47-17-90. Id. at 111.

The immediate case involves a different situation. In this case, the issue is whether the receipt of medical treatment constitutes “compensation” as used in §42-17-90(A) to start the one-year clock from the date of last payment of compensation. Appellant argues the one-year period should be allowed to start from the last date in which any medical treatment was received. In this case, the Commission ordered the Defendants to continue to provide causally related medicals for psychological problems as long as medically necessary under Dodge v. Brucoli Clark, Layman, Inc. 514 S.E.2d.593 (S.C. 1999). (Supp. R. p. 72). To allow a claimant to file for change of condition one year from the date of the last medical treatment received would eliminate the one year restriction set forth in § 42-17-90(A) for all cases in which future medical treatment has been ordered by the Commission or agreed to by the parties. Therefore, in all cases involving an award of future medical treatment, there would be no end to the period of time in which the claimant could file for change of condition, thereby eviscerating the intent of §42-17-90.

Appellant also cites the Allen v. Vincent Outdoor Advertising case in support of the argument that a liberal construction of the one-year time limitation in the change of condition statute is required. 36 S.C. 22, 112 S.E.2d 722 (S.C. 1962). The Allen case is distinguishable from the current case. In the Allen case, the Court rejected the Appellant’s argument that a literal and strict reading of the one year limitation was directed to the Commission, and not the claimant, and therefore the application for a change of condition must be heard within one year, as opposed to requested by a claimant. Id. at 725. This was clearly not the intent of the one-year

limitation for filing a change of condition claim, and therefore the Court allowed for a more liberal construction of the statute. In the instant case, Appellant's petition for a change of condition was not made within one year from the date of last compensation, so the Allen case does not apply.

As such, the Circuit Court properly affirmed the Commission's Order that Appellant's petition for a change of condition was properly denied on the basis that it was barred by the one year statute of limitations. (R. pp. 8-9).

IV. THE CIRCUIT COURT CORRECTLY ADOPTED THE FINDINGS OF THE COMMISSION THAT APPELLANT FAILED TO ESTABLISH A COMPENSABLE CHANGE OF CONDITION CAUSALLY CONNECTED TO THE ADMITTED CLAIM.


Appellant argues that her work-related psychological condition most probably severely worsened at or shortly preceding her hospitalizations extending from February 28, 2006 until May 16, 2006, based on a letter from Dr. Stephanie Boyd. (Supp. R. p. 74). After considering the testimony and the depositions of both Appellant and Dr. Boyd, the Hearing Commissioner properly found that the Appellant did not sustain a compensable change of condition casually related to the admitted claim. (Supp. R. p. 71). The Hearing Commissioner noted in his Decision and Order that although Dr. Boyd stated in her letter that the Appellant's condition worsened shortly before her hospitalization, Dr. Boyd later went on to clarify in her deposition that the Appellant had not been hospitalized for her workers' compensation claim injuries since her April 11, 2006 discharge. (R. p. 49, lines 5-18 – Supp. R. p. 67). The Hearing Commissioner's Order further notes that Dr. Boyd went on to describe several unrelated issues that affected the Claimant's condition, and Dr. Boyd was not able separate the Claimant's treatment for work-related injuries and non-work-related injuries. (Supp. R. p. 71). In Nawa v. Wackenhut

Corporation, the South Carolina Court of Appeals held that, "South Carolina requires employee's job to be more than one factor, to any extent, in the injury or death." 341 S.E.2d 800, 288 S.C. 250 (S.C. App. 1986). For these reasons, the Circuit Court correctly affirmed the Commission's decision that the Claimant did not sustain a change of condition causally related to her original injury. (R. p. 10).

CONCLUSION

Based on the arguments set forth above, Respondent's respectfully request that the July 24, 2012 Order of the Circuit Court be affirmed in full.

Respectfully Submitted,



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February 6, 2013

✓
The Honorable Jenny Abbott Kitchings
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P.O. Box 11629
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Re: Carmen Morgan vs. South Carolina Bank and Trust
WCC File No.: 0214040 DOI: 8/8/2002
Carrier: Cincinnati Insurance Company - Claim No.: WC8985142
WJC&B File No.: 0750.00009

Dear Ms. Kitchings:

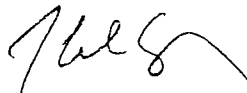
Pursuant to SCARC, Rule 208(7), please find enclosed for filing a Supplemental Citation that has come to the attention of Respondents after the filing Respondent's Initial Brief.

Respondent's cite the holding in *Rhame v. Charleston County School District*, 399 S.C. 477; 732 S.E.2d 202 (S.C. App. 2012), in support of the arguments set forth in Respondent's Initial Brief, Argument I, pages 4-7. In *Rhame*, the South Carolina Court of Appeals held that both motions to reconsider and petitions for rehearing are not applicable in matters before the Appellate Panel of the Workers' Compensation Commission, and therefore the petition for rehearing did not toll the time to appeal the Full Commission's Order. *Id.* at 483.

By copy of this letter I am also providing copy of the Supplemental Citation to counsel for the Appellant.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



John Gabriel Coggiola

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Enclosure(s)

cc: ~~Ms. Alexis Chambers~~

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CERTIFICATE OF COUNSEL

Respondents, by and through their undersigned counsel, certify that the Respondents' Final Brief complies with Rule 211(b), SCACR.



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PROOF OF SERVICE


The undersigned certifies that on the date indicated below he served counsel for Appellant with a copy of the Final Brief of Respondent by mailing copies of the same by United States Mail postage prepaid to the following addresses:

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