

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2012-213175

RECEIVED

JUN 17 2013

SC Court of Appeals

Gilbert Chavis,.....Employee,

v.

AVX Corporation, Employer, and Liberty Mutual Insurance Co., Carrier

In re: AVX Corporation and Liberty Mutual Insurance Company.....Respondents,

v.

South Carolina Second Injury Fund.....Appellant.

FINAL BRIEF OF THE RESPONDENTS

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Statement of the Issue on Appeal

- I. Did the Circuit Court properly affirm the Workers' Compensation Commission's conclusion that the Respondent's claim for reimbursement was timely commenced in accordance with S.C. Code Ann. § 15-3-600, based upon substantial evidence in the record and the applicable law?

Statement of the Case

Gilbert Chavis sustained injuries to the neck, back, arms, hands, shoulders, brain, reproductive system, psyche, and "whole body" on December 7, 1998 and then sustained additional injuries to the back on December 27, 1999. On January 25, 2000, while undergoing a cervical injection as a result of these injuries, Chavis suffered a cerebellar stroke, resulting in an injury to his brain. By Decision and Order dated August 31, 2006, the South Carolina Workers' Compensation Commission awarded Chavis lifetime medical and indemnity benefits for a traumatic brain injury, as a result of both the December 7, 1998 and the December 27, 1999 accidents. (R. pp.1—23). The Commission's Appellate Panel affirmed this award by Order dated June 18, 2007. (R. pp.24—27). Thereafter, both claims were settled under a Final Lump Sum and Release Agreement dated October 31, 2008. According the terms of the agreement, Chavis was paid \$348,000.00 in full settlement and satisfaction of every liability arising out of both the December 7, 1998 and December 27, 1999 accidents. (R. p. 29)

AVX and Liberty Mutual (hereinafter, "the Respondents") then claimed reimbursement from the Second Injury Fund for benefits paid pursuant to S.C. Code Ann. § 42-9-400. (R. p.288). The reimbursement claim was acknowledged by the Second

Injury Fund (hereinafter “the Fund”) in writing. (R. p.289). The Fund further conceded that all of the requirements for reimbursement set forth in S.C. Code Ann. § 42-9-400 were satisfied for both the 1998 and the 1999 claims. (R. p.104). A Consent Order was issued on July 28, 2010, by which the Fund agreed that the only issue in dispute relative to the reimbursement claim was the statute of limitations; “the Second Injury Fund agreed that the Employer/Carrier satisfied the requirements for full reimbursement in both cases pursuant to S.C. Code Ann. §42-9-400.” (R. pp.104—106). The Fund subsequently stipulated that the statute of limitations was satisfied for the 1999 claim. (R. p.134, lines 6—10).

The reimbursement claim originally came before Commissioner Andrea Roche for a hearing on January 13, 2011. (R. p.107). By Order dated June 28, 2011, Commissioner Roche found that “Pursuant to S.C. Code Ann. 15-3-600 and Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010), the Respondents filed a claim against the Fund seeking reimbursement for the December 7, 1998 accident under S.C. Code Ann. 42-9-400 within ten years after the claim accrued and; therefore, the claim for reimbursement is timely.” (R. p.42). The Commission did not reach the Respondents’ argument that the Fund should be estopped to deny this administrative reimbursement claim based upon an overly-strict construction of S.C. Code Ann. § 15-3-600. Nevertheless, the Fund was ordered to reimburse the Employer/Carrier \$384,738.15 for compensation paid by the Respondents, as well as all causally-related medical expenses as provided by S.C. Code Ann. 42-9-400. (R. pp.43—44). The Fund appealed to the Commission’s Appellate Panel, which affirmed

Commissioner Roche's Order in its entirety by final Decision and Order dated December 29, 2011. (R. pp.45—60).

A hearing was held before the Honorable Benjamin H. Culbertson in Conway, South Carolina on July 24, 2012 pursuant to the Fund's appeal to the Court of Common Pleas. (R. pp.151—176). On appeal, the Fund argued that the Commission erred as a matter of law by concluding that an "action for relief" is commenced with the filing of a claim. After considering the briefs and oral arguments presented by the parties, Judge Culbertson affirmed the December 29, 2011 Decision and Order of the South Carolina Workers' Compensation Commission in its entirety by Order dated August 20, 2012. (R. pp. 66—70). Thereafter, the Fund filed the present appeal to the South Carolina Court of Appeals.

Facts

The Fund admits that the Respondents gave notice, in writing, of their reimbursement claim to the Fund and to the Workers' Compensation Commission on August 4, 1999. (R. p.289). However, due to the complicated nature of Chavis's injuries, the Workers' Compensation Commission did not make a final award of medical and compensation benefits to Chavis until June 18, 2007, at which time both the 1998 and 1999 claims were combined. (R. pp.24—27). Thereafter, both the 1998 and 1999 claims were settled under a single Final Lump Sum and Release Agreement dated October 31, 2008. (R. p56, #9).

At the direction of the Fund, the Respondents completed a formal Second Injury Fund Claim form for the 1998 claim on July 23, 2009. (R. pp.289—293). The Second

Injury Fund Claim form was submitted for the 1999 claim on July 28, 2009. (R. pp.294—295). Both Claim forms gave the Fund detailed information relative to all aspects of the reimbursement claims, including supporting documentation and medical records. Thereafter, the Fund requested additional documentation to support these claims. (R. p.296). The additional requested documentation in support of the Respondents' reimbursement claims was submitted to the Fund on August 14, 2009. (R. p.297). As of November 10, 2009 – more than ten years after the claims accrued -- the Fund was still actively negotiating the reimbursement claim with the Respondents. (R. p.298). On February 8, 2010, the Respondents filed Form 54s, requesting hearings in both claims. (R. pp.299—300). The Fund filed a Form 55 denying the 1999 claim on March 15, 2010; however, no Form 55 was filed in connection with the 1998 claim until June 2, 2010. (R. p.301; p.304).

The Fund has stipulated that the 1999 claim was timely filed within the ten year statute of limitations under S.C. Code Ann. § 15-3-600, yet the Fund argues that only the 1998 claim was not timely filed. (R. p.134, lines 6—10). Furthermore, the Fund concedes that all of the requirements for reimbursement set forth in S.C. Code Ann. § 42-9-400 have been satisfied for both the 1998 and the 1999 claims. (R. pp.104-106).

Argument

- I. Substantial evidence in the record and the applicable law support the Commission's conclusion that the claim for reimbursement was timely commenced in accordance with S.C. Code Ann. § 15-3-600.

The Workers' Compensation Commission ordered that the Second Injury Fund reimburse the Respondents for benefits paid in connection with Chavis's 1998 and 1999 work-related accidents. The Commission specifically found that a reimbursement claim was commenced by July 23, 2009 because the

"filing on July 23, 2009 served the Fund with all information necessary to file a claim under S.C. Code Reg. 67-206 because it fully informed the Fund as to the time, place, and character of the accident and the general nature of the injury and made it clear to the Fund that the [Respondents] expected to receive reimbursement provided by S.C. Code Ann. 42-9-400." (R. p.57, #12).

The Fund argues that a reimbursement claim is not actually commenced until a Form 54 hearing request is filed, citing Transportation Insurance Company v. South Carolina Second Injury Fund. However, the Courts have never defined what constitutes the filing of a claim or the commencement of an administrative reimbursement "action" for purposes of the general statute of limitations, S.C. Code Ann. §15-3-600, and Transportation Insurance does not require the parties to request a hearing in order to commence a reimbursement claim against the Second Injury Fund. In fact, the Transportation Insurance case does not even contain the terms "Form 54" or "hearing request."

According to S.C. Code Ann. § 15-3-600, an "action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued." Pursuant to S.C. Code Ann. § 15-3-20(B), a civil action is brought in a court and is "commenced when the summons and complaint are filed with the clerk of court..."

However, S.C. Code Ann. § 15-3-20 does not apply to workers' compensation claims, which are administrative matters for which there is no summons or complaint filed with a clerk of court. There being no case law, statute, or regulation defining what commences an "action for relief" in the context of a workers' compensation claim, the Respondents respectfully contend that the Workers' Compensation Commission committed no error in concluding that administrative "actions" under the Workers' Compensation Act are commenced with the filing of a "claim" pursuant to S.C. Code Reg. 67-206.¹

Therefore, the issue should be whether the Respondents commenced their reimbursement claim against the Fund within 10 years after placing the Fund on notice of their claim, which according to the South Carolina Supreme Court, is when the reimbursement claim accrues. Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010). In the present case, the Respondents served the Fund with notice of their reimbursement claim on August 4, 1999 in accordance with S.C. Code Ann. § 42-9-400, at which time the Fund assigned a SIF claim number: "067417."² (R. p.289). The Respondents respectfully suggest that it is untenable for the Fund to assign claim numbers, or to otherwise acknowledge or investigate claims, yet maintain that a claim has yet to commence.

¹ In determining what constitutes the filing of a claim, it is almost universally held that the law "does not contemplate the filing of a claim having the same particularity as a formal pleading or stating 'all elements of a cause of action;' and that the law would be sufficiently complied with if the claim in whatsoever form sets forth enough facts to apprise the [defendant] of the time, place, and character of the accident, and the general nature of the injury, so that it may be understood that the claimant expects to receive the benefits provided by the Act." Hamilton v. Bob Bennett Ford, 336 S.C. 72, 78, 518 S.E.2d 599, 602 (Ct. App. 1999).

² The SIF reimbursement claim number for the 1999 accident is "100406."

Furthermore, S.C. Code Ann. § 42-9-400(f) requires that:

“An employer or his carrier shall notify the Industrial Commission and the Director of the Second Injury Fund in writing of any possible claim against the fund as soon as practicable but in no event later than after the payment of the first seventy-eight weeks of compensation.”

According to the South Carolina Supreme Court,

*“The primary purpose of § 42-9-400(f) is to establish a deadline for perfecting **actual claims** for reimbursement with the Fund ... Once a claim is submitted, the Fund may agree to reimburse an employer or carrier. In such a case, the Fund must submit the agreement to reimburse to the Commission for its approval. § 42-8-310(b). If the Fund denies a **claim** for reimbursement, the employer or carrier may request a hearing before the Commission on the **claim**. 25A S.C. Code Reg. 67-208(D)....Additionally, a purpose of § 42-9-400(f) is to provide **notice** to the Fund and the Commission of potential **claims** for reimbursement.”*

S.C. Second Injury Fund v. American Yard Products, 330 S.C. 20, 21, 496 S.E.2d 862, 863 (1998). (emphasis added).

Therefore; the primary purpose of the correspondence dated August 4, 1999 was to perfect an “actual claim” for reimbursement with the Fund in accordance with S.C. Code Ann. § 42-9-400(f). In fact, the Fund acknowledged that an actual claim for reimbursement had been made by correspondence dated September 11, 2003, wherein SIF Claims Analyst Phillip L. Johnson advised that SIF Claim #067417 (for date of

accident 12/1/98) was “pending investigation.” (R. p.289). Only if the reimbursement claim had commenced would it be deemed “pending” by the Fund and it would be unreasonable to suggest otherwise.³

Over the years, the underlying claim for medical and compensation benefits was actively and aggressively litigated, with final payment of compensation being made pursuant to a clincher agreement on July 23, 2009 after multiple motions and appeals.⁴ (R. p.293). During this time, the Fund had sufficient information regarding the reimbursement claim to investigate the same and certainly had sufficient information to understand that the Respondents expected reimbursement to the extent allowed by S.C. Code Ann. § 42-9-400.

Furthermore, the Respondents relied on the Fund’s statement of September 11, 2003 that the reimbursement claim was “pending,” as the Fund did not submit any agreement to reimburse the claim, the Fund did not formally deny the claim, and the claim was not finally adjudicated.⁵ (R. p.289). According to the South Carolina Supreme

³ See BLACK’S LAW DICTIONARY, 6th Ed. (1990) (defining the term “pending” as “[b]egun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined ... an action or suit is ‘pending’ from its inception until the rendition of final judgment.”).

⁴ In fact, a lump sum of indemnity benefits in the amount of \$261,500.00 was paid on July 23, 2009 pursuant to the settlement agreement. Prior to that time, the Respondents could not have legally reduced their reserves pursuant to S.C. Code Ann. § 42-9-400(l); therefore, were not legally entitled to reimbursement prior to July 23, 2009. (R. p.293).

⁵ “A claim for compensation lawfully constituted and pending before the commission may not be dismissed without a hearing and without some proper form of final adjudication. No statute of limitations runs against a litigant while his case is pending...” Halks v. Rust Engineering Co., et al., 208 S.C. 39, 46, 36 S.E.2d 852, 855 (1946) (internal citations omitted).

Court,

“A claim for compensation lawfully constituted and pending before the commission may not be dismissed without a hearing and without some proper form of final adjudication. No statute of limitations runs against a litigant while his case is pending...”

Halks v. Rust Engineering Co., et al., 208 S.C. 39, 46, 36 S.E.2d 852, 855 (1946)

(internal citations omitted). Therefore, the Commission properly denied the Fund’s statute of limitations defense to the Respondent’s pending claim.

In addition to the correspondence of August 4, 1999, the Respondents further filed a formal claim for reimbursement with its correspondence of September 5, 2003 and July 23, 2009, by which the Respondents supplied the Fund with detailed information regarding every element of their reimbursement claim. (R. pp.288 -- 295). A reimbursement claim against the Fund, like any other a workers’ compensation claim, may also be commenced pursuant to S.C. Code Reg. 67-206(C):

A letter filed with the Commission also files a claim. The letter should include the information listed in items (1) through (12) below:

- (1) Claimant’s name (and worker’s name, if different);*
- (2) Claimant’s address (and workers’ address if different);*
- (3) Claimant’s home and work telephone numbers (and workers’ home and work telephone numbers, if different);*
- (4) Claimant’s social security number (and workers’ social security number, if different);*
- (5) Employer’s name;*
- (6) Employer’s address;*
- (7) Employer’s telephone number;*

- (8) Employer's insurance carrier, if known;*
- (9) Date of injury;*
- (10) The county in which the injury occurred;*
- (11) Type of injury (to which area of the body);*
- (12) Description of the accident.*
- (13) Failure to include any of the information above does not bar the claim if the information necessary to an issue in a claim is given to the Claims Department on request.*

In the present case, the Respondents served the Fund with all information necessary to file a claim under S.C. Code Reg. 67-206 well before the expiration of the ten year statute of limitations applicable to civil claims.⁶

Furthermore, our Courts have universally held that the Commission “will accept as the equivalent of a statutory claim any paper that contains the substance usually supplied by a formal claim, although the form may be defective.” Hamilton v. Bob Bennett Ford, 336 S.C. 72, 86, 518 S.E.2d 599, 606 (1999). The rationale is that a claim, as contemplated by the Workers’ Compensation Act, is not necessarily a “formal” pleading, but must simply set forth enough facts to apprise the defendant of “the time, place, and character of the accident and the general nature of the injury” so that it may be understood that the Respondents (AVX and Liberty Mutual) expect to receive the benefits (*e.g.*, reimbursement) provided by the Act. Here, the Fund fully understood that the Respondents expected to receive reimbursement provided by S.C. Code Ann. § 42-9-

⁶ Note that the Fund inexplicably argues that S.C. Code Reg. 67-208 (“Requesting a Hearing, Employer”) is somehow the controlling regulation for filing a claim, as opposed to S.C. Code Reg. 67-206 (“Filing a Claim”); however, the Fund cites no authority for this argument.

400 no later than July 23, 2009 -- before the expiration of any 10 year statute of limitations⁷ -- by virtue of the Respondents' communications and Reimbursement Request Form, which were served upon the Fund and detailed their reimbursement claim and its merits, including the following statement:

The Claimant initially sustained an injury to his lower back and shoulder in an accident which occurred in 1996. He filed a workers' compensation claim for the lower back injury and continued to receive medical treatment for this injury in 1996, 1997, 1998, and 1999. The Claimant had a subsequent work-related injury in 1998 when he was lifting a pot at work in which he injured his right shoulder and back. As a result of the right shoulder injury, the Claimant had an epidural injection in 2000. During the injection, he sustained a minor cerebral stroke. Prior to the 1998 accident, the Claimant also received treatment for erectile dysfunction, diabetes, and depression.

The Claimant had multiple preexisting problems that were agitated and/or combined with the 1998 injury resulting in substantially greater disability and medical payment than that which would have resulted from the December 7, 1998 injury alone. The Claimant had pre-existing injuries to his lower back and right shoulder, as well as problems resulting from preexisting diabetes, depression, and erectile dysfunction, resulted in substantially greater disability and medical payments than would have resulted from the 1998 injury alone.

(R. p.293).

Clearly, substantial evidence in the record and the applicable law support the Commission's finding and conclusion that the present action against the Fund was commenced by the filing of a claim for reimbursement within ten years after it accrued in accordance with S.C. Code Ann. § 42-9-400 and S.C. Code Reg. 67-206 and; therefore, it is not time-barred by S.C. Code Ann. § 15-3-600.

⁷ Assuming the 10 year statute of limitations began to run on August 9, 1999, then a claim filed or perfected on or before July 23, 2009 is timely under S.C. Code Ann. § 15-3-600, even if the statute was not tolled by the conduct of the Fund upon which the Respondents relied.

The Respondents respectfully contend that the Workers' Compensation Commission committed no legal error in rejecting the Funds' argument that a claim can only be commenced with a Form 54 hearing request, reasoning that "[t]here is no reason why there should be a more strict filing requirement for reimbursement claims than any other claim under the Workers' Compensation Act."⁸ The Workers' Compensation Act contains no time limitations for hearing requests, only claims. *See* S.C. Code Ann. § 42-15-40. Therefore, if the Fund's argument is to be accepted, then S.C. Code Ann. § 15-3-600's ten year statute of limitations should apply to all workers' compensation claims, not just reimbursement claims against the Fund, because S.C. Code Ann. § 42-15-40 limits only the time in which a *claim* must be filed and does not require that a *hearing* be requested within any set period. If only a hearing request tolls S.C. Code Ann. § 15-3-600, a workers' compensation claimant, no matter whether he timely and properly filed a claim, no matter if his claim were accepted or even partially awarded, would be barred from further workers' compensation benefits if he did not file a formal hearing request within 10 years after his accident. The Respondents respectfully contend that such a result was never intended by the legislature and; therefore, the Fund's argument should be rejected. The only reasonable interpretation was that of the Commission: an administrative "action" is commenced with the filing of a claim. Therefore, the Commission's legal ruling in this regard should be accorded the most respectful consideration and affirmed on appeal. CFRE, LLC v.

⁸ *See Rogers v. Spartanburg Regional Medical Center*, 328 S.C. 415, 491 S.E.2d 708 (Ct. App. 1997) (*rehearing denied, certiorari granted*) (holding that "The statute of limitations applicable to workers' compensation claims, like the Workers' Compensation Act as a whole, should be given liberal construction, and any reasonable doubts should be resolved in favor of coverage.").

Greenville County Assessor, 395 S.C. 67, 747, 716 S.E.2d 877, 882 (2011) (stating that “[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.”).

Conclusion

For the reasons set forth herein, the Respondent respectfully requests that the Workers’ Compensation Commission’s Decision and Order dated September 23, 2011 be affirmed in its entirety, as it is supported by substantial evidence in the record and the applicable law.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of the Respondents complies with Rule 211(b), SCACR and Supreme Court Order 2007-08-16-02, dated August 13, 2007, requiring redaction of personal data identifiers.

June 14, 2013



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PROOF OF SERVICE

The undersigned hereby certifies that above-referenced, Appellant, the South Carolina Second Injury Fund, was served with three (3) bound copies of the Final Brief of the Respondents and Certificate of Counsel, this 14th day of June 2013, by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to their attorney of record, as follows:

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