

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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SC Court of Appeals

W.C.C. FILE NO. 1709864

SARAH JEFFERIES, ... CLAIMANT/APPELLANT,

- v -

MILLIKEN AND COMPANY, ... EMPLOYER,

AND

LIBERTY INSURANCE CORPORATION, ... CARRIER/RESPONDENTS.

Appellate Panel Review held in Columbia,
South Carolina on December 18, 2018 per notices
timely and properly served on all parties.

Appellate Panel Decision and Order filed

march 1, 2019

APPEARANCES: Claimant/Employee appeared pro se.

Employer/Carrier represented by Jeffrey S. Jones, Esquire, Willson
Jones Carter & Baxley, P.A., Greenville, South Carolina

STATEMENT OF CASE AND PROCEDURAL HISTORY

On July 19, 2017, the Claimant filed a Form 50, Request for Hearing, alleging she sustained an injury to her left hip and left leg as a result of pushing racks and bags of waste at work on or about June 22, 2017 and further alleging entitlement to additional medical examination and treatment for her alleged injuries. Thereafter, Defendants filed a Form 51, denying compensability of the Claimant's alleged left hip and left leg injuries.

A hearing was held before Commissioner Avery B. Wilkerson, Jr. (hereinafter, "Single Commissioner") on March 2, 2018, to determine the issues outlined in the parties' Forms 50 and 51. At the hearing, it was the Claimant's position that she sustained a compensable injury to her left hip and left leg on June 22, 2017 as a result of pushing racks and bags of waste during the course of her employment. She further contended she was entitled to workers' compensation benefits, including but not limited to additional medical treatment for her left hip and left leg.

At the hearing, Defendants sought denial of the claim and asserted the Claimant was unable to meet her burden of proof by a preponderance of the evidence that she sustained a compensable injury to her left hip and left leg by accident arising out of and in the course of her employment as required under S.C. Code Ann. § 42-1-160. In the alternative, Defendants denied the alleged mechanism of injury caused the Claimant's alleged condition to her left hip and left leg for reasons including the Claimant's longstanding history of leg, back, and hip problems. Defendants further contended Claimant could not satisfy her burden of proving her condition was causally related to her work with Milliken because there was no adequate medical opinion to that effect. In addition, Defendants took the position the Claimant failed to provide evidence, as required in South Carolina, that the Claimant's job

at Milliken was the proximate cause of her injuries pursuant to *NAWA v. Wackenhut Corp.*, 288 S.C. 250, 252 (1986).

The Single Commissioner considered testimony from the Claimant and reviewed the medical evidence submitted by the respective parties. Following the hearing, the Single Commissioner issued a Decision and Order, dated April 26, 2018, finding that the Claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury by accident arising out of and in the course of her employment on or about June 22, 2017, and the Claimant's employment with Milliken was not the proximate cause of her alleged injuries as required in *NAWA*. On April 26, 2018, the Commission mailed the approved Decision and Order to the Claimant.

The file was closed with the Commission on May 29, 2018.

According to eCase, the Claimant filed an appeal on June 14, 2018. On that date, the Commission issued an Administrative Order dismissing the Claimant's Request for Commission Review as untimely pursuant to § 42-17-50, R.67-701, and R.67-205D. A copy of this Order was sent via regular mail to defense counsel and the Claimant.

On June 22, 2018, Defendants received via regular mail notice of the Claimant's Motion to Reinstate Appeal, indicating she failed to receive the approved Decision and Order and received a Form 30 on June 1, 2018. Included with the notice from the Commission dated June 20, 2018 are two copies of a "Motion to Reinstate" – one is dated June 8, 2018 and the other June 14, 2018.

On June 28, 2018, Defendants filed a Response to Claimant's Motion to Reinstate Appeal contending the Claimant's appeal filed on June 4, 2018 was untimely and outside

the 14 day period for which an application for Commission review must be made pursuant to S.C. Code § 42-17-50.

On July 16, 2018, the Commission granted the Claimant's Motion to Reinstate Appeal.

The Claimant filed a Form 59 Informal Brief with this Commission on August 24, 2018. On August 31, 2018, the Commission served a copy of the Claimant's Form 59 on the Defendants, and that correspondence was received by the Defendants on September 4, 2018.

This matter was initially scheduled for Appellate Panel Review on October 23, 2018 on the issues set forth in the Claimant's/Appellant's Form 30 Request for Commission Review. Notice of the hearing was properly served upon all parties of interest. On October 23, 2018, the Claimant/Appellant appeared unrepresented, and Milliken and Liberty Insurance Corporation were represented by Jeffrey S. Jones, Esquire, of Willson Jones Carter & Baxley, P.A. On that date, prior to the hearing, the Appellate Panel advised the Claimant/Appellant of her right to retain an attorney to act on her behalf in this claim. The Claimant/Appellant indicated her desire to retain an attorney. At that time, the Defendants/Respondents took the position that the Claimant/Appellant was previously advised of her right to retain counsel at the initial Single Commissioner Hearing scheduled for November 7, 2017, and at that time, the Claimant/Appellant indicated a desire to retain an attorney. Previously, an Order to Postpone Hearing was entered by this Commission on December 5, 2017, and as the Claimant/Appellant did not retain an attorney, the matter was reset for hearing before a Single Hearing Commissioner and took place on March 2, 2018. However, in the abundance of caution, it was ordered that the Appellate Panel

Review scheduled for October 23, 2018 be postponed to allow the Claimant/Appellant to retain an attorney and was reset for December 18, 2018. Thereafter, the Claimant did not obtain an attorney.

Briefs were submitted by the parties, and oral arguments were held before the undersigned Commissioners of the Appellate Panel on December 18, 2018.

SINGLE COMMISSIONER'S FINDINGS OF FACT:

THE FOLLOWING WERE FOUND AS FACTS:

1. That all parties to this action are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Sarah Jefferies as Employee/Claimant, and Milliken and Company as Employer/Defendants, and Liberty Insurance Company as Carrier/Defendant.
2. The Claimant alleged she sustained injury to her left hip and left leg as a result of an injury at work on or around June 22, 2017.
3. The Claimant denied prior problems with her left hip and leg. (Hearing Tr. pp. 14, 17, 18, 20, 28).
4. The Claimant's testimony is inconsistent with her prior medical records and allegation of injury. Prior to the date of alleged injury, the Claimant made several claims for bodily injury, including various injuries to her neck, back, left arm, left shoulder, left leg, hips, and right leg as a result of numerous motor vehicle accidents. (APA #1, p. 1; APA #6, pp. 94, 102, 103, 105, 109, 113, 114, 124). As early as 2008, the Claimant was diagnosed with degenerative disc disease, degenerative changes, and mild scoliosis of the back. (APA #2, pp. 9-10, 13-20, 24-25, 29). She was further diagnosed by Dr. Ruffing in December 2016 with muscle spasm of the back. (APA #2, pp. 30-31). This finding is

based upon the evidence in the record, including but not limited to the ISO Claim Search report.

5. The Claimant alleged a prior work injury at Milliken on October 17, 2014 to her right leg after pushing a cart. (APA #3). Thereafter, the Claimant was treated by Dr. Ruffing for right leg pain. Dr. Ruffing noted no obvious signs of trauma and indicated that the Claimant ambulated around the office without significant difficulty. The Claimant was diagnosed with leg pain. (APA #4, p. 41). The Claimant later returned with complaints of persistent pain in her right leg and hip and continued to treat with Dr. Ruffing for leg pain and obesity. (APA #4, pp. 44, 47-49).

6. The Claimant did not report a specific injury at work on June 22, 2017 as a cause of her problems. This finding is based upon the evidence in the record, including but not limited to the testimony of Michael Williams, Senior Production Leader at Milliken Limestone plant and Claimant's supervisor. (Hearing Tr. pp. 40, 41, 43).

7. The Claimant testified that she presented to Ashley Atchley, Milliken nurse with complaints of bilateral leg pain. To the contrary, Ms. Atchley testified the Claimant presented on or about June 26, 2017 complaining only of right hip and right anterior thigh pain. Ms. Atchley further testified the Claimant did not report any left leg pain or any specific injury. (Hearing Tr. p. 50, 51, 54).

8. The Claimant's medical records are inconsistent with her testimony and do not corroborate the Claimant's allegation of injury:

- a. On December 28, 2016, the Claimant presented to Dr. Ruffing with complaints of hypertension, right leg pain, hip pain, and acute bilateral low back pain with right-sided sciatica. (APA #4, pp. 50-56).

- b. On June 28, 2017, six days after the alleged injury, the Claimant presented to Dr. Rollins complaining of off and on bilateral hip pain over the last several years. She was assessed for osteoarthritis and bilateral hip pain, right greater than left. This is inconsistent with the Claimant's testimony and allegations of injury. This finding is based upon the evidence in the record, including but not limited to the medical records of Dr. Gerald Rollins. (APA #5, pp. 67-69).
 - c. The Claimant continued to treat with Dr. Ruffing on July 10, 2017 when she presented complaining of arthritis and aching in her hip and upper legs. No work injury is mentioned and, the note indicates a history of "[n]o injury." Dr. Ruffing diagnosed the Claimant with bilateral hip pain. X-rays showed no acute injury and revealed osteoarthritis of both hips. This is inconsistent with the Claimant's testimony and allegations of injury. (APA #4, pp. 58-63).
 - d. On July 12, 2017, the Claimant told Dr. Rollins of pushing a buggy at work. Dr. Rollins wrote, "[w]hile this lady says that this is work related, she actually gave us the history when she was in the office just a couple of weeks ago that she had had pain off and on over several years in her hips, and now she is saying that this is work related. I cannot really connect this type of problem to pushing a buggy. While that may make her hurt more, I do not think it is a causative factor to any significant degree." (APA #5, pp. 70-72).
9. On August 30, 2017, Dr. Rollins indicated that he would schedule the Claimant

for a left total hip arthroplasty. (APA #5, pp. 78-80). On November 20, 2017, Dr. Rollins performed the left hip replacement surgery. (APA #5, pp. 87-88).

10. The Claimant presented no expert medical causation opinion linking her left hip and leg condition to the alleged injury at work. To the contrary, Dr. Rollins opined that pushing a buggy is not “a causative factor to any significant degree.” He further indicated that the Claimant previously provided a history that she experienced pain in her hips off and on over several years. (APA #5, p. 72).

11. The Claimant failed to provide a statement and/or opinion by any medical expert to a reasonable degree of medical certainty supporting her allegations that her left hip condition was most probably caused by her alleged injury by accident on June 22, 2017. The Claimant further failed to provide a causation opinion by any medical expert to a reasonable degree of medical certainty in support of her allegations that her left hip condition was most probably caused by her alleged injury at work on June 22, 2017.

12. As detailed in the above findings, Claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of employment with Milliken and Company.

13. As detailed in the above findings, the Claimant failed to prove by a preponderance of the evidence that her alleged mechanism of injury was the proximate cause of her hip condition.

SINGLE COMMISSIONER'S CONCLUSIONS OF LAW

Under the foregoing Findings of Fact and the Code of Laws of South Carolina, as amended, it is concluded that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury by accident arising out of and in the course and scope of her employment on or about June 22, 2017.

3. The Claimant's employment with Milliken was not the proximate cause of her alleged injuries as required in *Nawa v. Wackenhut Corp.* *NAWA v. Wackenhut Corp.*, 288 S.C. 250, 252 (1986).

APPEAL OF THE SINGLE COMMISSIONER'S ORDER

As indicated above, on June 4, 2018, the Claimant filed an untimely Application for Review in this case, setting forth the following: "I were hurt on my job 6/22/17 had to have hip replacement still out of work. I were put a rack of yarn filling about 104 pound and put the socket out my hip. Report to my supervisor nurse put me on light duty work and I couldn't walk that god. Walk in every day with a cane until I couldn't walk know more. Nurse put me on light duty work Aug. 24, 17."

APPELLATE PANEL FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FULLY AFFIRM THE FINDINGS AND CONCLUSIONS OF THE SINGLE COMMISSIONER, AND SPECIFICALLY FIND THE FOLLOWING AS FACTS:

1. That all parties to this action are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Sarah

Jefferies as Employee/Claimant, and Milliken and Company as Employer/Defendants, and Liberty Insurance Company as Carrier/Defendant.

2. The Claimant alleged she sustained injury to her left hip and left leg as a result of an injury at work on or around June 22, 2017.

3. The Claimant denied prior problems with her left hip and leg. (Hearing Tr. pp. 14, 17, 18, 20, 28).

4. The Claimant's testimony is inconsistent with her prior medical records and allegation of injury. Prior to the date of alleged injury, the Claimant made several claims for bodily injury, including various injuries to her neck, back, left arm, left shoulder, left leg, hips, and right leg as a result of numerous motor vehicle accidents. (APA #1, p. 1; APA #6, pp. 94, 102, 103, 105, 109, 113, 114, 124). Specifically, the Claimant has a history of injury and problems involving the left leg dating back to 1994. (APA #16, p. 113), and on June 28, 2017, contrary to her hearing testimony, the Claimant provided a history to Dr. Gerald Rollins that she experienced bilateral hip pain off and on over the last several years. (APA #5, pp. 67-69). This finding is based upon the evidence in the record, including but not limited to the ISO ClaimSearch report.

5. The Claimant alleged a prior work injury at Milliken on October 17, 2014 to her right leg after pushing a cart. (APA #3). Thereafter, the Claimant was treated by Dr. Ruffing for right leg pain. Dr. Ruffing noted no obvious signs of trauma and indicated that the Claimant ambulated around the office without significant difficulty. The Claimant was diagnosed with leg pain. (APA #4, p. 41). The Claimant later returned with complaints of persistent pain in her right leg and hip and continued to treat with Dr. Ruffing for leg pain and obesity. (APA #4, pp. 44, 47-49).

6. The Claimant did not report a specific injury at work on June 22, 2017 as a cause of her problems. This finding is based upon the evidence in the record, including but not limited to the testimony of Michael Williams, Senior Production Leader at Milliken Limestone plant and Claimant's supervisor. (Hearing Tr. pp. 40, 41, 43).

7. The Claimant testified that she presented to Ashley Atchley, Milliken nurse with complaints of bilateral leg pain. To the contrary, Ms. Atchley testified the Claimant presented on or about June 26, 2017 complaining only of right hip and right anterior thigh pain. Ms. Atchley further testified the Claimant did not report any left leg pain or any specific injury. (Hearing Tr. p. 50, 51, 54).

8. The Claimant's medical records are inconsistent with her testimony and do not corroborate the Claimant's allegation of injury:

- a. On December 28, 2016, the Claimant presented to Dr. Ruffing with complaints of hypertension, right leg pain, hip pain, and acute bilateral low back pain with right-sided sciatica. (APA #4, pp. 50-56).
- b. On June 28, 2017, six days after the alleged injury, the Claimant presented to Dr. Rollins complaining of off and on bilateral hip pain over the last several years. She was assessed for osteoarthritis and bilateral hip pain, right greater than left. This is inconsistent with the Claimant's testimony and allegations of injury. This finding is based upon the evidence in the record, including but not limited to the medical records of Dr. Gerald Rollins. (APA #5, pp. 67-69).
- c. The Claimant continued to treat with Dr. Ruffing on July 10, 2017 when she presented complaining of arthritis and aching in her hip and upper legs.

No work injury is mentioned and, the note indicates a history of “[n]o injury.” Dr. Ruffing diagnosed the Claimant with bilateral hip pain. X-rays showed no acute injury and revealed osteoarthritis of both hips. This is inconsistent with the Claimant’s testimony and allegations of injury. (APA #4, pp. 58-63).

d. On July 12, 2017, the Claimant told Dr. Rollins of pushing a buggy at work. Dr. Rollins wrote, “[w]hile this lady says that this is work related, she actually gave us the history when she was in the office just a couple of weeks ago that she had had pain off and on over several years in her hips, and now she is saying that this is work related. I cannot really connect this type of problem to pushing a buggy. While that may make her hurt more, I do not think it is a causative factor to any significant degree.” (APA #5, pp. 70-72).

9. On August 30, 2017, Dr. Rollins indicated that he would schedule the Claimant for a left total hip arthroplasty. (APA #5, pp. 78-80). On November 20, 2017, Dr. Rollins performed the left hip replacement surgery. (APA #5, pp. 87-88).

10. The Claimant presented no expert medical causation opinion linking her left hip and leg condition to the alleged injury at work. To the contrary, Dr. Rollins opined that pushing a buggy is not “a causative factor to any significant degree.” He further indicated that the Claimant previously provided a history that she experienced pain in her hips off and on over several years. (APA #5, p. 72).

11. The Claimant failed to provide a statement and/or opinion by any medical expert to a reasonable degree of medical certainty supporting her allegations that her left

hip condition was most probably caused by her alleged injury by accident on June 22, 2017. The Claimant further failed to provide a causation opinion by any medical expert to a reasonable degree of medical certainty in support of her allegations that her left hip condition was most probably caused by her alleged injury at work on June 22, 2017.

12. As detailed in the above findings, Claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of employment with Milliken and Company.

13. As detailed in the above findings, the Claimant failed to prove by a preponderance of the evidence that her alleged mechanism of injury was the proximate cause of her hip condition.

APPELLATE PANEL CONCLUSIONS OF LAW

In view of the aforementioned Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury by accident arising out of and in the course and scope of her employment on or about June 22, 2017.

3. The Claimant's employment with Milliken was not the proximate cause of her alleged injuries as required in *Nawa v. Wackenhut Corp.* *NAWA v. Wackenhut Corp.*, 288 S.C. 250, 252 (1986).

APPELLATE PANEL ORDER

After careful review in the present case, the Appellate panel of the South Carolina Workers' Compensation Commission has determined the Findings of Fact and Conclusions of Law found in the Single Commissioner's Decision and Order, dated April 26, 2018, are hereby **AFFIRMED IN FULL**.

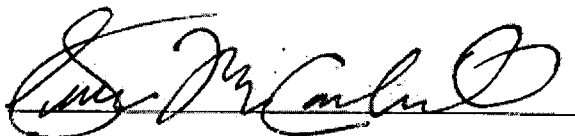
IT IS HEREBY ORDERED that Claimant's request for benefits under the Act be, and hereby is, denied.

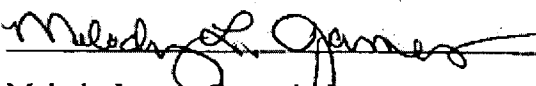
No hearing costs are assessed.

IT IS SO ORDERED/AFFIRMED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Michael Campbell, Commissioner


Gene McCaskill, Commissioner


Melody James, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on March 1, 2019