

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1713493

DELINZY GRANT
EMPLOYEE / CLAIMANT,
vs.
STEEL TECHNOLOGIES
EMPLOYER,
and
ZURICH AMERICAN INSURANCE, CO.
CARRIER,
DEFENDANTS.

**APPELLATE PANEL'S
DECISION AND ORDER**

RECEIVED
JUN 21 2019
SC Court of Appeals

HEARING:

Appellate Panel review held in Columbia, South Carolina on March 18, 2019, per notices timely and properly served on all parties of interest

APPEARANCES:

Ryan T. LeBlanc, Esquire, on behalf of the Employee/Claimant/Respondent

Matthew C. LaFave, Esquire, on behalf of Steel Technologies/Zurich American Insurance, Co./Defendants/Appellants.

PURPOSE OF HEARING:

To determine issues as set forth on Forms 50/51 and Form 30.

DECISION AND ORDER:

Honorable Commissioner T. Scott Beck, Chair, Honorable Melody L. James, and Honorable Avery B. Wilkerson, Jr.

FILED:

May 31, 2019

STATEMENT OF THE CASE

On September 20, 2017, the Claimant filed a Form 50 – Not requesting a hearing with the South Carolina Workers' Compensation Commission. The Claimant alleged that she had sustained an injury to her low back as a result of the repetitive activities she performed at Steel Technologies.

On March 27, 2018, the Claimant filed a Form 50 – requesting a hearing, alleging the same. The Defendants timely filed a Form 51 on March 6, 2018, denying the claim on two grounds: that the Claimant sustained a repetitive trauma injury as a result of her work and that she failed to provide timely notice in accordance with S.C. Code Ann. § 42-15-20(c). A hearing was set in front of the undersigned Single Commissioner on August 14, 2018 in Isle of Palms, South Carolina. All parties agreed that venue was proper for the above-referenced hearing.

On October 2, 2018, the Single Commissioner issued a Decision and Order stating the following:

FINDINGS OF FACT

1. Claimant alleges a repetitive trauma injury to her low-back and right lower extremity (due to radiculopathy) arising out of and in the course and scope of her employment.
2. Claimant underwent various evaluations and treatments for her alleged work-related injury. Most notably with Dr. Thomas Anderson at Southeastern Spine Institute.
3. On 05/11/2017, in FMLA documentation, treating physician, Dr. Thomas S. Anderson of the Southeastern Spine Institute, opined Claimant is unable to perform any of her job functions due to her condition and is unable to work. In addition, Dr. Anderson opined Claimant will be incapacitated from 06/08/2017 to 09/08/2017 and will need to attend

follow-up treatment appointments or work part-time or on a reduced schedule, which is medically necessary due to her condition. (Defendants' pgs. 58-60).

4. On 07/21/2017, on a post-surgery Progress Report of Illness Form, Dr. Anderson opined Claimant cannot work. (Defendants' p. 41)
5. On 08/31/2017, in his medical notes at a follow-up appointment, Dr. Anderson opines he would see Claimant back in two months and she's not ready to return to work at this point. (Claimant's p. 9)
6. On 11/01/2017, in his medical notes at a follow-up appointment, Dr. Anderson notes Claimant has now lost her job. (Claimant's p. 10)
7. On 02/21/2018, in a questionnaire for the Claimant, Dr. Anderson opined to a reasonable degree of medical certainty that the repetitive activities claimant performs as a mechanic operator directly caused the injury she sustained to her lumbar spine, as well as, aggravated, exacerbated, and/or worsened her lumbar spine. In addition, Dr. Anderson further opined to a reasonable degree of medical certainty that the medical treatment he recommended and performed, with regards to Claimant's low back injury, was medically necessary to lessen her disability and that Claimant is not at MMI. He also noted he would continue to treat Claimant. (Claimant's pgs. 13-14) (Drafting party to detail questionnaire.)
8. On 08/14/2018, at the hearing before the undersigned Commissioner, Claimant testified regarding her condition, the treatment she has received, the job duties she performed, the symptoms she continues to have and that she did not report an injury to her employer because she did not realize her condition was work-related until advised by Dr. Anderson.

9. Based on a preponderance of the evidence, particularly the unrefuted medical opinions of Dr. Anderson, the Claimant's testimony, and the description of Claimant's job duties, I hereby find Claimant has met her burden of proof that she sustained a compensable repetitive trauma injury to her low back and right lower extremity (due to radicular complaints only), arising out of and in the course and scope of her employment.
10. Furthermore, based on the date of Dr. Anderson's questionnaire, 02/21/2018, which is the first record of Claimant's condition being work-related, and the filing date of Claimant's Form 50, 09/20/2017, I hereby find Claimant has satisfied the notice standard pursuant to 42-15-20 (C).
11. Therefore, I hereby find Claimant is not at MML.
12. A determination of permanency is premature at this time.
13. Claimant is entitled to all past causally-related medical treatment and out-of-pocket expenses.
14. Claimant is entitled to an evaluation and all causally-related medical treatment, if recommended, by a physician of the Defendants' choosing with a specialty to the back.
15. Defendants' chosen specialist is to be provided with all prior, causally-related medical records.
16. Claimant is entitled to an award of TTD from 06/08/2017 to present and continuing.
17. All other issues are held in abeyance at this time.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of the undersigned Commissioner as follows:

1. Under Section 42-1-172, the Claimant sustained a compensable injury due to the repetitive activities of her job, arising out of the course and scope of her employment to her low back and her right lower extremity. Her right lower extremity is only an affected body part due to radicular complaints stemming from the low back.
2. Under Section 42-1-40, the Claimant's average weekly wage is \$872.67, with a corresponding compensation rate of \$581.81.
3. Under Regulation 67-503, the Claimant is entitled to temporary, total disability benefits from June 8, 2017 to present and continuing.
4. Under Section 42-17-30, the Defendants are ordered to choose a specialist to treat the Claimant's low back and right lower extremity injuries. The Defendants will pay for all causally-related medical treatment and reimburse the Claimant for any out-of-pocket expenses for the same. The Defendants will provide said treatment under the accordance of Section 42-15-60 until the Claimant achieves MMI.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby,

ORDERED, ADJUDGED, AND DECREED, that the Claimant, Delinzy Grant, sustained a compensable, work-related injury to her low back and right lower extremity on June 5, 2017; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Defendant, Steel Technologies, will provide an evaluation for the Claimant with a physician of their choosing. The Defendant will also be responsible for any and all past and future causally-related medical treatment. Defendants will also reimburse the Claimant for any causally-related out-of-pocket expenses she incurred for her treatment; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Claimant's, Delinzy Grant, average weekly wage is \$872.67 with a corresponding compensation rate of \$581.81; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Claimant is entitled to temporary total disability benefits from June 8, 2017 to present and continuing.

No hearing costs are assessed in this matter.

AND IT IS SO ORDERED!

Within the statutory period, the Defendants filed a Form 30 Application for Review in this case, setting forth their grounds for appeal on October 5, 2018. On appeal, the Defendants respectfully submitted the following:

1. Whether or not Claimant sustained a compensable repetitive trauma injury in accordance with SC Code Ann. § 42-1-172?
2. Whether or not Claimant's notice to Defendants of a repetitive trauma injury was timely pursuant to SC Code Ann § 42-15-20(c).

In Appellate review, the panel shall, pursuant to S.C, Code Ann. Section 42-17-50 (1985) review the award and weigh evidence as presented at the initial hearing, and if good grounds be shown, therefore, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the Hearing Commissioner.

Based upon a review of the foregoing, and after full consideration of the evidence in the records and the parties' respective arguments, the panel **AFFIRMED** the findings of the Single Commissioner.

Accordingly, the Hearing Commissioner's October 2, 2018 Decision and Order is AFFIRMED. The Appellate Panel enters the following Findings of Fact and Conclusions of Law on its own:

FINDINGS OF FACT

1. Claimant alleges a repetitive trauma injury to her low-back and right lower extremity (due to radiculopathy) arising out of and in the course and scope of her employment.
2. Claimant underwent various evaluations and treatments for her alleged work-related injury. Most notably with Dr. Thomas Anderson at Southeastern Spine Institute.
3. On 05/11/2017, in FMLA documentation, treating physician, Dr. Thomas S. Anderson of the Southeastern Spine Institute, opined Claimant is unable to perform any of her job functions due to her condition and is unable to work. In addition, Dr. Anderson opined Claimant will be incapacitated from 06/08/2017 to 09/08/2017 and will need to attend follow-up treatment appointments or work part-time or on a reduced schedule, which is medically necessary due to her condition. (Defendants' pgs. 58-60).
4. On 07/21/2017, on a post-surgery Progress Report of Illness Form, Dr. Anderson opined Claimant cannot work. (Defendants' p. 41)
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9. Based on a preponderance of the evidence, particularly the unrefuted medical opinions of Dr. Anderson, the Claimant's testimony, and the description of Claimant's job duties, we hereby find Claimant has met her burden of proof that she sustained a compensable repetitive trauma injury to her low back and right lower extremity (due to radicular complaints only), arising out of and in the course and scope of her employment.
10. Furthermore, based on the date of Dr. Anderson's questionnaire, 02/21/2018, which is the first record of Claimant's condition being work-related, and the filing date of Claimant's Form 50, 09/20/2017, we hereby find Claimant has satisfied the notice standard pursuant to 42-15-20 (C).
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CONCLUSIONS OF LAW

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1. Under Section 42-1-172, the Claimant sustained a compensable injury due to the repetitive activities of her job, arising out of the course and scope of her employment to her low back and her right lower extremity. Her right lower extremity is only an affected body part due to radicular complaints stemming from the low back.
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ORDER

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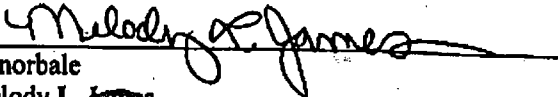
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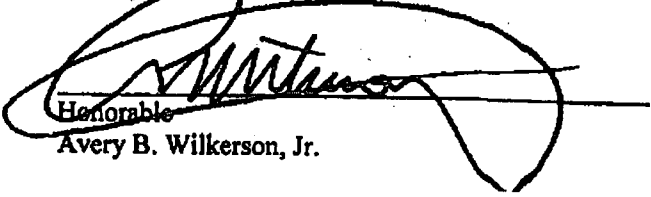
No hearing costs are assessed in this matter.

AND IT IS SO ORDERED!

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Honorable
T. Scott Beck, Chair


Honorable
Melody L. James


Honorable
Avery B. Wilkerson, Jr.

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 May 31, 2019